

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Mandatory Category Rulemaking: Comment  
**Date:** Monday, December 17, 2018 11:12:37 AM  
**Attachments:** [EQB 2018 Rule Letter.doc](#)

---

## ***Denise Wilson***

Director, Environmental Review Program

### **Minnesota Environmental Quality Board**

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2523

[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Mark Sehr <mark.sehr@co.rock.mn.us>  
**Sent:** Monday, December 17, 2018 11:01 AM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Subject:** Mandatory Category Rulemaking: Comment

Denise:

Please find a letter with Rock County's comments on the proposed rule attached.

Mark R. Sehr, PE  
Rock County Highway Engineer

January 16, 2019

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Rock County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Rock County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**

from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):  
 In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].
  
4. **The proposed revisions to subpart 27 item B would result in new costs** for Rock County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose

of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Rock County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Rock County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without*

*regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and



- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,

Mark R. Sehr, PE – Rock County Public Works Director  
Rock County Highway Department  
1120 N. Blue Mound Avenue  
PO Box 808  
Luverne, MN 56156-0808

**From:** calscf66  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Environmental Rules  
**Date:** Tuesday, November 13, 2018 1:41:45 PM

---

Changing or making new rules should always be made to the public. The biggest problem with the way it is set up is that most of the time the rural population feel like we have no choice. Everything is done in St.Paul! Why should we have to go there? MN is a big state and issues that affect us should be set up throughout the state especially when it affects us. That could even be done through SKYPE or other information sources.  
Thanks, Cal Anderson

Sent from my Verizon, Samsung Galaxy smartphone

**From:** Elizabeth Dickinson  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** We need a public hearing on any rule making that eliminates uranium monitoring!  
**Date:** Friday, December 07, 2018 9:32:14 PM

---

Dear Mr. Dahl,

In order to have a public hearing on the proposed rule making changes to eliminate uranium monitoring, I'm told you need a total of 25 people requesting a public hearing.

On no account do I think the EQB (or any other governmental entity) should change rules regarding uranium monitoring without a public hearing.

Please count me as one of the 25 people requesting a hearing.

Thank you!

*Best wishes,*

*Elizabeth*

Elizabeth Dickinson  
Public Speaker and Certified Life Coach  
M.A. Holistic Counseling Psychology  
651-235-1208 cell

[www.pursueyourpath.com](http://www.pursueyourpath.com)  
<http://www.linkedin.com/in/elizabethadickinson>

Author:

[The Concise Coaching Handbook: How To Coach Yourself And Others To Get Business Results](#)

My top 5 strengths: strategic, positivity, input, achiever, empathy.  
<http://www.strengthsfinder.com/home.aspx>

**From:** Mary LeBlanc  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** North American Water Office  
**Date:** Wednesday, December 12, 2018 10:04:16 AM

---

December 4, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Road  
 St Paul, MN 55101

RE: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200  
 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

Dear Mr. Dahl:

This comment is in regard to the Proposed Permanent Rules Relating to Environmental Review Mandatory Categories that is before the Office of the Revisor of Statutes. Revisor ID R-4157 Minnesota Rules: Chapter 4410.

The North American Water Office (NAWO) is submitting this Public Comment requesting modification of the proposed rule change. While these described Proposed Rules Governing Environmental Review are primarily jurisdictional and procedural in nature there is a proposed deletion that eliminates a critical level of safety and assurance for public health.

Specifically, NAWO requests the reinstatement of 4410.4400 Subpart 8 Lines 20.1 through 20.3, the Mandatory Environmental Review for the Monitoring of radioactive characteristics in the metallic mineral mining processing permits that are either pending or proposed. The language to be reinstated reads as follows: "For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics; the DNR shall be the RUG." NAWO further requests whatever formal proceeding is required to ensure that this language is retained. In the interest of public health and safety, this language must be maintained within the rules governing Mandatory Environmental Review Categories.

The existence of radioactive materials in Minnesota has been well documented for decades. The first confirmed discovery of uranium in Minnesota was documented in February 1956 in the northwest angle of the state. Evidence provided. [https://www.newspapers.com/.../first\\_discovery\\_of.../](https://www.newspapers.com/.../first_discovery_of.../)

Any Minnesota copper extraction permit needs a review process to monitor, at a minimum, for the radioactive isotopes uranium and radium that are in the discharges that are discussed by the US EPA on their website. Evidence provided.

TENORM: Copper Mining and Production Wastes - <https://www.epa.gov/.../tenorm-copper-mining-and...>  
 NAWO is aware of no documentation that copper and other deposits of interest in Minnesota are not accompanied by these radioactive isotopes.

Even the Federal Government acknowledges this radiation exposure to the public from mining metals. So why is the Minnesota Environmental Quality Board attempting to exempt mining companies and state agencies from monitoring for these extremely toxic radioactive elements?

Contrary to statements that are being bandied about by both State government agencies and certain environmental organizations, work published in 1980 by Center for Urban and Regional Affairs (CURA) at the University of Minnesota provides readily available historical documentation regarding the potential location of radioactive elements. Uranium in Minnesota an Introduction to Exploration, Mining and Milling by Dr. Dean Abrahamson and Edward Zabinski portrays a map of significance to all future mining permits as well as those issued and pending currently. See Figure 1. NAWO has also provided a hotlink for the entire Abrahamson/Zabinski report as further documentation as proof that radiological review must continue for all mining activities in Minnesota.

Uranium in Minnesota: An Introduction to Exploration, Mining, and ...

[www.cura.umn.edu/publications/catalog/e1026](http://www.cura.umn.edu/publications/catalog/e1026)

Figure 1 is an excerpted page (36) from this historical work which maps the locations of potential uranium

deposits in Minnesota.

Figure 1: Uranium Potential of Precambrian Rocks in Minnesota

The only minerals currently mined in Minnesota according to the Minnesota Department of Natural Resources (MDNR) website are: iron ore and taconite, clay, sand and gravel, silica sand, granite and limestone, and peat.

<https://www.dnr.state.mn.us/.../geology/digging/mining.html>

“Manganese, copper, nickel, and titanium have also been discovered in the state in minable quantities but are not of high enough quality under today's prices to mine profitably. Exploration for additional resources, such as gold, platinum, diamonds, zinc, and lead, continues today in Minnesota.”

Regarding the profitability of mineral extraction in Minnesota at today's prices, apparently Northmet's Polymet Project didn't get the message.

Obviously, with the false assertion that, “There is no uranium in Minnesota,” there is a tricky bit of paper shuffling going on by state government and mining corporations to gain access to lands and minerals across Minnesota, including in the Ceded Territories protected by 1854 and 1855 Treaties with Minnesota's Anishinaabeg Peoples.

A cursory examination of the Bureau of Land Management's site “The Diggings,” for locating where mining claims are and have been, identifies 11 uranium claims existing in Minnesota. Hotlink evidence provided. <https://thediggings.com/usa/minnesota/commodities>

A more recent 2009 geological survey at the University of Minnesota in collaboration with the Department of Natural Resources Division of Waters and the Fond du Lac Band of Lake Superior Chippewa describes uranium concentrations in Carleton County of 10 to 20 times background levels, and states that an increased interest in commercial nuclear operations could revitalize interest in exploration and mining of uranium. Evidence provided.

[https://conservancy.umn.edu/.../p6\\_min\\_res%5B1%5D.pdf...](https://conservancy.umn.edu/.../p6_min_res%5B1%5D.pdf...)

Who is responsible for the outright lie that radiation monitoring during mining for metals in Minnesota is not necessary because there is no uranium in Minnesota?

Add the existing assortment of Mining permits approved and/or pending, overlaid with the wild rice waters and with the locations of uranium bearing rock formations, and another sleight of hand becomes apparent. See Figure 2. The Minnesota Pollution Control Agency generated this Figure 2 through an information request by NAWO.

Adding Figure 1 with Figure 2 provides an image that should alarm any human being who relies on fish, or wild rice, or water not contaminated with radioactive materials, to live.

Figure 2

Failure of the Minnesota Environmental Quality Board to retain the language presently contained in 4410.4400 Subpart 8 Lines 20.1 through 20.3, as is hereby requested by the North American Water Office would be an unconscionable dereliction of duty and a murderous betrayal of the public's trust in the Minnesota Environmental Quality Board to protect public health and safety.

Respectfully submitted,

George Crocker  
Executive Director

Lea Foushee  
Environmental Justice Director

"I have read the letter submitted by North American Water Office in this matter and I hereby incorporate the factual material and arguments of NAWO's letter and join in their request for a hearing.

Sincerely, Mary LeBlanc

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Mandatory Category Rulemaking: Comment  
**Date:** Monday, December 17, 2018 12:27:44 PM  
**Attachments:** [Scanned Document\\_20181217\\_115253.pdf](#)

---

## **Denise Wilson**

Director, Environmental Review Program

### **Minnesota Environmental Quality Board**

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2523

[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Stephen Schnieder <sschnieder@co.nobles.mn.us>  
**Sent:** Monday, December 17, 2018 10:59 AM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Cc:** Dahl, Erik (EQB) <erik.dahl@state.mn.us>  
**Subject:** Mandatory Category Rulemaking: Comment

Denise,

Attached is a letter from Nobles County with comments on the proposed rules.  
I am requesting a public hearing for the proposed rules.

*Stephen P. Schnieder, P.E.  
Nobles County Public Works Director  
960 Diagonal Road  
P O Box 187  
Worthington, MN 56187-0187*

*Office: 507-295-5322*

*Fax: 507-372-8348*

December 17, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Nobles County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Nobles County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**



from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):  
 In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].
  
4. **The proposed revisions to subpart 27 item B would result in new costs** for Nobles County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose

of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Nobles County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Nobles County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without*

*regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and

- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me 507-295-5334/sschnieder@co.nobles.mn.us.

Sincerely,



Stephen P. Schnieder  
Public Works Director  
Nobles County, Minnesota

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Notice of EQB Rule Changes  
**Date:** Monday, December 17, 2018 2:51:21 PM

---

**Denise Wilson**

Director, Environmental Review Program

**Minnesota Environmental Quality Board**

520 Lafayette Road  
St. Paul, MN, 55155  
O: 651-757-2523  
[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Willis Mattison <mattison@arvig.net>  
**Sent:** Monday, December 17, 2018 2:50 PM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Subject:** Notice of EQB Rule Changes

Denise,  
There seems to be an inconsistency between the language in the Notice and in Admin rules for comment and requesting hearings when legality of a rule may be in question. Your Notice seems to require that any comment addressing legality of a rule change must be stated as such. I find no such requirement in Admin Rules shown below.

Did I miss something or is this a special provision for EQB rule revisions?

=====

**14.25 PUBLIC HEARING.**

§

## Subdivision 1. Requests for hearing.

If, during the 30-day period allowed for comment, 25 or more persons submit to the agency a written request for a public hearing of the proposed rule, the agency shall proceed under the provisions of sections [14.14](#) to [14.20](#). The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule. If not previously published under section [14.22, subdivision 2](#), a notice of the public hearing must be published in the State Register and mailed to those persons who submitted a written request for the public hearing. Unless the agency has modified the proposed rule, the notice need not include the text of the proposed rule but only a citation to the State Register pages where the text appears.

A written request for a public hearing that does not comply with the requirements of this section is invalid and may not be counted by the agency for purposes of determining whether a public hearing must be held.



This email has been checked for viruses by Avast antivirus software.

[www.avast.com](http://www.avast.com)



**From:** la sims  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [lfoushee@nawo.org](mailto:lfoushee@nawo.org)  
**Subject:** Request for Public Hearing  
**Date:** Saturday, December 22, 2018 2:40:51 AM

---

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, MN 55101

Mr. Dahl,

This communication is in support of the North American Water Office's request to hold a public hearing regarding the Minnesota Environmental Quality Board proposing a rule change that would eliminate Mandatory Environmental Review for the Monitoring of radioactive characteristics in the metallic mineral mining processing permits.

Revisor ID R-4157 Minnesota Rules: Chapter 4410

Being the daughter of a West Virginia coal miner, I know the dire importance of environmental reviews/assessments/etc for all parties involved.

Thank your for your time and attention to this matter.

la sheila sims  
Member of the Environmental Justice Advisor Group of the MPCA



## ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

December 19, 2018

Denise Wilson and Erik Dahl  
 Environmental Quality Board  
 Attn: Mandatory Category Rulemaking  
 520 Lafayette Road North  
 St. Paul, MN 55155

Thank you for the opportunity to comment on the Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories, Revisor ID: R-4157, published in the *State Register* on November 13, 2018, 43 SR 531, and in the *EQB Monitor* on November 19, 2018.

The focus of our comment is the proposed revision of the pipeline provision in the mandatory EAW section of the environmental review rules, Minn. R. 4410.4300, subp. 7, and the parallel provision in the mandatory EIS section, Minn. R. 4410.4400, subp. 24. The proposed new rule would delete the current section and replace it with the following:

For construction, as defined in Minnesota Statutes, section 216G.01, subd. 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision 3 or 216G.02, subdivision 1, the PUC [Public Utilities Commission] is the RGU [responsible government unit]. Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.

The mandatory EIS rule for pipelines, Minn. R. 4410.4400, subp. 24, would remain the same: “For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, chapter 216G.02, the Public Utilities Commission is the RGU.”

The SONAR claims that the sole purpose of this change is to reconcile the language in Minn. R. 4410.4300, subp. 7 with amendments to the PUC pipeline routing statute, Minn. Stat. §§ 216G.01 - .02, that came later. The current section 216B.02, subd. 1, defines a “pipeline” requiring full route selection procedures as:

- (1) pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601  
 (312) 673-6500 • [www.ELPC.org](http://www.ELPC.org)

David C. Wilhelm, Chairperson • Howard A. Learner, Executive Director  
 Columbus, OH • Des Moines, IA • Duluth, MN • Jamestown, ND • Madison, WI • Sioux Falls, SD • Washington, D.C.



- hazardous liquids by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility;<sup>1</sup> or
- (2) pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.

Minn. Stat. § 216G.01, subd. 3, in turn, has its own definition of “pipeline.” Under that subdivision:

“Pipeline” means a pipeline located in this state which is used to transport natural or synthetic gas at a pressure of more than 90 pounds per square inch, or to transport crude petroleum or petroleum fuels or their derivatives, coal, anhydrous ammonia or any mineral slurry to a distribution center or storage facility which is located within or outside of this state.<sup>2</sup>

The intent, then, of the proposed rule revision appears to be to require mandatory EISs for larger pipelines, and mandatory EAWs for the smaller ones, and to use the thresholds in section 216G.01 and 216.02 to make that determination. That makes sense, and Friends of the Headwaters (“FOH”) could support that change.

Unfortunately, that is not all the proposed rule revision does.

First, in the proposed new Minn. R. 4410.4300, subp. 7, there is a completely new sentence: “Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.” That new sentence was not in the preliminary draft rules, it is not mentioned in the SONAR, and its rationale is not explained anywhere in the documents EQB has made public. Our understanding is that this language was inserted after a meeting EQB staff had with staff at the PUC, the DNR, and the MPCA in August 2018.

Our concern is that this additional sentence might create a new argument for reversing, the decision of the Minnesota Court of Appeals in *In re North Dakota Pipeline Co.*, 869 N.W.2d 693 (Minn. Ct. App. 2015), and sanctioning, by rule, the PUC’s old “comprehensive environmental assessment” alternative to normal environmental review for pipeline projects.

For many years, the PUC avoided the standard environmental review process spelled out in Minn. Stat. § 116D.04 and EQB rules when it considered pipeline projects. Instead, under an authorization from the EQB under Minn. Stat. § 116D.04, subd. 4a,<sup>3</sup> and Minn. R. 4410.3600, the PUC had been accepting “comprehensive environmental assessments” prepared by

---

<sup>1</sup> Under federal regulations, “hazardous liquids” include crude oil, refined petroleum products, highly volatile liquids such as propane, butane, ethylene, or condensates, supercritical carbon dioxide or anhydrous ammonia. 49 C.F.R. § 195.2.

<sup>2</sup> That definition also exempts pipelines owned or operated by a natural gas public utility as defined in section 216B.02, subdivision 4.

<sup>3</sup> Subdivision 4a authorizes the EQB to “identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement.”

*applicants* under Minn. R. 7852.1500 as part of the route permit process as adequate substitutes for full environmental review.<sup>4</sup>

In proceedings over the proposed Sandpiper pipeline a few years ago, the PUC departed from its usual course and divided its certificate of need (“CN”) and route permit (“RP”) proceedings. The PUC then proceeded to determine whether the pipeline project met the requirements for a certificate of need without any prior environmental review or environmental assessment at all.

The Court of Appeals held unanimously that that PUC decision violated the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.04. The court found that no pipeline certificate of need could be granted unless preceded by a MEPA-compliant environmental review. 869 N.W.2d at 697-98.

The PUC and its staff disagreed strongly with that decision, and they filed a petition for review with the Minnesota Supreme Court, which was denied. Since then, the PUC did order a full EIS for the Line 3 pipeline project, to apply to both its certificate of need and route permit decision processes. FOH and other parties are not satisfied with the resulting EIS, and the adequacy of the EIS is now pending before the Court of Appeals. But the PUC decision to use the regular MEPA environmental review process, and not the old CEA process, was a good decision. Certainly, however, the preference of PUC and its staff would be to have the option in all cases to return to the applicant-prepared “comprehensive environmental assessments” under chapter 7852 and Minnesota Statutes chapter 216G. By adding rule language that says environmental review of pipelines “must be conducted,” not under MEPA, but “according to chapter 7852 and Minnesota Statutes, chapter 216G,” the PUC and pipeline applicants get another argument that the full EIS process can be avoided.

FOH, of course, does not concede that this language would actually have that effect. A full EIS process can comply with *both* MEPA *and* the PUC’s statute and rules, and we believe that would be an appropriate way to harmonize potentially conflicting provisions. Nevertheless, it is difficult to discern any rationale for this extra sentence other than to preserve the option to avoid the usual MEPA requirements for environmental review. Certainly, the SONAR provides no alternative rationale.

This is not a theoretical issue, because, if the new Line 3 pipeline corridor is ultimately approved, there will likely be more pipeline applications coming. Enbridge has a problem with several of its pipelines on easements across the Leech Lake reservation that are due to expire and will not likely be renewed.

FOH is not arguing that EQB’s rules for alternative review processes be changed in this rulemaking process, or that any previous authorizations be overturned by rule. The question of whether applicant-prepared CEA’s under Minnesota Rules, chapter 7852, are adequate alternatives to full EISs in pipeline cases should be decided on the facts by the EQB, not by trying to slip in rule language through a technical amendments package.

---

<sup>4</sup> That authorization is and always has been a mistake, and the EQB should formally withdraw it, but that is not what FOH is requesting here. FOH is urging the EQB to maintain the status quo.

The second issue has to do with the mandatory EIS category for pipelines. The new mandatory EAW category uses the phrase “[f]or construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2,” but the old mandatory EIS category will still use “[f]or routing.” That potentially limits the scope of a pipeline EIS to issues not covered by a certificate of need, which is confusing and inconsistent with the *North Dakota Pipeline Co.* ruling.

FOH therefore recommends that the last sentence in the proposed new subpart 7 of Minn. R. 4410.4300 be deleted. FOH further recommends that EQB replace the word “routing” in the current Minn. R. 4410.4400, with the word “construction” or with the phrase “construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2.” That will better effectuate EQB’s intent to clarify the mandatory categories and better reconcile them with existing law, and to avoid substantive disputes like the ones outlined in this comment.

If you have questions or concerns, please contact me at your convenience.

Sincerely,

---

SCOTT R. STRAND  
Environmental Law & Policy Center  
60 S. 6<sup>th</sup> St., Suite 2800  
Minneapolis, MN 55402  
612-386-6409  
[sstrand@elpc.org](mailto:sstrand@elpc.org)

ATTORNEY FOR FRIENDS OF THE  
HEADWATERS

Dated: December 19, 2018

**From:** Barbara Draper  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 2:19:42 PM

---

To: Ms Wilson and Mr. Dahl:

I object to the following proposed rule changes:

4410.0500 subpart 6 - I believe the whole board should be involved so maximize transparency in decision-making and furthermore, that the time period should be retained.

4410.4300 subpart 7 (the mandatory EAW rules) - Pipelines should have a mandatory EIS for the application as well as the certificate of need and routing. Also, gas pipelines should still be under the rules, either EAW or EIS.

4410.43 subpart 24 (mandatory EIS rules) - this should be assessed for legality - it likely runs contrary to MEPA law and MN Court of Appeals Ruling.

Regarding proposed rules for refineries:

4410.43 subpart 4 (mandatory EAW rules) - Refinery expansions of 10,000 barrels per day should be subject to mandatory EIS requirements

4410.4400 subpart 4 (mandatory EIS rules) - In addition to requiring EIS for construction of new refineries, major rebuilds (such as the one in Duluth) should be subject to mandatory EIS.

Sincerely,

Barbara Draper  
2212 19th Ave NE  
Minneapolis, MN 55418

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Seuffert, Will \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Comments on Proposed MN Rules Chg 4410.4300, subpart 27.b  
**Date:** Monday, December 31, 2018 11:45:56 AM  
**Attachments:** [Ltr\\_181231 MN Rule 4410.4300 Subp 27.B Proposal.pdf](#)

---

FYI

## ***Denise Wilson***

Director, Environmental Review Program

### **Minnesota Environmental Quality Board**

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2523

[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Dale Lueck <Rep.Dale.Lueck@house.mn>  
**Sent:** Monday, December 31, 2018 11:44 AM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Cc:** Chad Urdahl <Chad.Urdahl@house.mn>; Emilie Nelson <Emilie.Nelson@house.mn>  
**Subject:** Comments on Proposed MN Rules Chg 4410.4300, subpart 27.b

Director Wilson,  
Please find the attached formal comment on the pending proposed rule change to MN Rules 4410.43000, subpart 27B that is before the EQB. Thank you considering this matter.

Sincerely Yours,

Dale Lueck

Minnesota House of Representatives (District 10B)

Office Phone: (651) 296-2365 Fax: (651) 296-5378

[rep.dale.lueck@house.mn](mailto:rep.dale.lueck@house.mn)

State Office Building (Room 423)

100 Rev. Dr. Martin Luther King Jr. Blvd.

Saint Paul, MN 55155-1298



**Dale Lueck**  
 State Representative  
 District 10B  
 Aitkin and Crow Wing Counties



# Minnesota House of Representatives

Director Denise Wilson  
 Environmental Review Program  
 Environmental Quality Board  
 520 Lafayette Rd  
 St. Paul, MN 55101

December 31, 2018

Re: Proposed Rule Change to MN Rule 4410.4300, subpart 27.B

Dear Director Wilson,

The Environmental Quality Board (EQB) is strongly urged to reject the entire proposed change to MN Rule 4410.4300 subpart 27.B with the exception of the final line, "... *local governmental unit shall be is the RGU.*"

The proposed rule change is unwarranted and will impose enormous new costs on local governmental units and rural Minnesota property owners due to the significant expansion of the number of Environmental Assessment Worksheets that will be required if the proposed change is adopted.

**Change is unwarranted:** All Minnesota governmental agencies and private property owners are subject to the wetland definitions contained in MN Rules Part 8420.0111, including subparts 32 and 72 referenced in the proposed rule change. There is no need to repeat the definitions or single out individual wetland definitions that are already contained in MN Rule 8420.0111.

The EQB would be acting beyond the scope of its authority should it elect to impose new more restrictive acreage and wetland type parameters than currently exist in MN Rules 4410.4300 subpart 27.B.

The EQB lacks legislative direction to change specific the wetland acreage parameters. To do so without specific legislative direction disregards the spirit and intent of EQB's existing rule making authority.

This proposed change lacks sufficient justification, provides insufficient analysis of the new mandated costs it will impose on LGU's and private citizens and is being proposed without the opportunity for adequate public input from those that would be impacted by the change and thus must not be adopted.

**New mandated costs to LGUs:** The proposed change will impose significant new cost on local government units by increasing the number of EAW's required for activities that might impact a wetland. Those costs will have to be paid by local taxpayers at the township, small city and county levels for processing the large number of additional EAW's this change would generate.

District Office: (218) 927-2495 Email: [rep.dale.lueck@house.mn](mailto:rep.dale.lueck@house.mn) Mailing Address (June- Dec.): 37489 295<sup>th</sup> Street, Aitkin, MN 56431  
 St. Paul Office: (651) 296-2365 Mailing Address (Jan-May): 311 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul MN 55155-1298



The proposed change will also impose delays and new costs on road construction, road maintenance, and storm water infrastructure construction and maintenance. In many cases acre-for-acre, 50% or more of these counties are wetland, thus almost any government infrastructure project is likely to impact wetland to some extent.

The proposed change imposes a tremendous new unfair tax burden on the citizens of north and north central Minnesota where most of the pre-settlement wetlands remain intact and are already well protected by existing federal, state and local regulations.

**New mandated costs to property owners and businesses:** The proposed change singles out the private property owners and business operations in northern and north central Minnesota for a new round of unwarranted costs and delays should they attempt to make even small improvements to private property or business infrastructure.

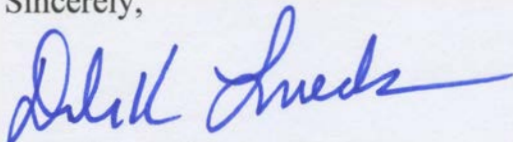
This proposal if adopted will significantly increase the number of EAW's required of citizens in many cases for minor building additions, new building construction or improvements to residential and business driveways that may have only minor involvement of a wetland.

This proposal puts an unfair burden on the citizens located in counties that contain significant amounts of wetland and is especially damaging to those counties that retain most of their pre-settlement wetlands, such as Aitkin and Crow Wing counties and all counties to their north and west. The reward for doing a good job protecting wetlands should not be increased restrictions.

In closing, the proposed change to MN Rule 4410.4300, Subp.27.B places an unwarranted and unfair burden on local units of government, private citizens and businesses located in north central and northern Minnesota. If adopted the proposal will damage the economies throughout rural Minnesota by adding new unwarranted costs to government and the private sector.

In the areas where the majority of pre-settlement wetlands still exist intact, they are being properly protected by federal, state and local wetland conservation regulations. Thus this proposal is unwarranted and should it be adopted will unnecessarily hurt the economies of rural Minnesota counties that still have significant amounts of wetland topography intact.

Sincerely,



Dale K Lueck

Minnesota House of Representatives (District 10B)

Copy to:

Aitkin County Board of Commissioners  
 Crow Wing County Board of Commissioners  
 Association of Minnesota Counties  
 Minnesota Association of Townships  
 League of Minnesota Cities

**District Office:** (218) 927-2495 Email: [rep.dale.lueck@house.mn](mailto:rep.dale.lueck@house.mn) Mailing Address (June- Dec.): 37489 295<sup>th</sup> Street, Aitkin, MN 56431  
**St. Paul Office:** (651) 296-2365 Mailing Address (Jan-May): 311 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul MN 55155-1298

**From:** Ron Potter  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Ray Bohn](#); [Daniel Larson](#); [Tom Hackbarth](#); [Tom Umphress](#); [Karen Umphress](#); [Ron Potter](#); [Perry May](#); [Mandie McGinnis](#); [Ely Echo](#); [Ervin Kleinschmidt](#); [George Radke](#)  
**Subject:** Mandatory Category Rulemaking Comment  
**Date:** Wednesday, January 02, 2019 1:23:14 PM

---

Dear Erik,

We have reviewed the EQB draft rules on Recreational Rules \ and have an issue on line 18.5. To lessen confusion and potential conflict, we believe if you struck “newly designated” on that line it would help clear up the language. By leaving it in, it seems to imply that newly designated trails would also count towards the 25 mile threshold for a mandatory EAW, while under part B., line 17.20 – 17.25, the new rule specifically states that it doesn’t count towards the 25 miles.

This minor provision certainly does not change the intent of your proposed rule, only clarifies the language.

Thank you and please feel free to contact me if you have any questions.

Sincerely,

Ron

Ron Potter

President, All-Terrain Vehicle Association of Minnesota

**From:** Bill Adamski  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comments  
**Date:** Wednesday, January 02, 2019 2:32:13 PM

---

**Mr. Erik Dahl:**

**My name is Bill Adamski, a resident of Minneapolis.**

**I am writing to be directly counted as one Minnesota citizen who demands that the EQB hold a public hearing - to solicit public comment - as part of its process to deliberate on any package of proposed rules.**

**Specifically, I am referring to the "Amended Dual Notice" in the 31 Dec 2018 edition of the "EQB Monitor": "Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157"**

**I am specifically opposed to EQB's "Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600".**

**I am a retired State of Wisconsin employee (35 years service) - formerly employed with the Wis Dept of Natural Resources (WDNR). Part of my duties were to draft administrative rules for air pollution control. Our WDNR process to deliberate and act upon any and all draft rules always included at least one public hearing on each package of draft rules. This step was required by Wis statute.**

**Consequently, I find the Minnesota EQB posting on Nov 13 that it will publish the notice of intent to adopt rules without a public hearing unless 25 or more persons request a hearing - reprehensible and anti-democratic.**

**The EQB must not enact this terrible proposed protocol. It is necessary to maintain a full sense of responsiveness and trust with the public - whenever requesting their input when deliberating draft rules.**

**Sincerely,**

**Bill Adamski**  
**4433 Garfield Ave. S.**  
**Minneapolis, MN 55419**

**From:** Greta Larson  
**To:** [Wilson, Denise \(EQB\)](#)  
**Cc:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory category rulemaking: comment  
**Date:** Wednesday, January 02, 2019 11:44:31 PM

---

Ms. Wilson and Mr. Dahl,

My business partner and I own and operate a small, productive organic farm in northern Minnesota. The climatic change we have experienced portends difficult seasons ahead. This past July, we lost one acre of crops in a rainstorm that pelted and flooded our fields with eight inches of water; a few thousand dollars lost in five hours was devastating for our margins. This past season was a several months long wash for many corn, soybean farmers in southern Minnesota. I hope documents that detail the hard science, corroborating my on the ground experience, serve as ledgers for everyone at the EQB. Clearly, our predicament is on account of inadequate environmental review laws across agencies being left on the books for decades.

It will be in the public interest if the EQB will allow public hearings on the Proposed Permanent Rules relating to environmental review.

I have been contacted by trusted legal experts to lend my voice and demand that the following proposed changes be rejected:

4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

The legality of the proposed changes to 4410.4300 and 4410.4400 have been called into question as they may not comply with Minnesota's Environmental Policy Act and a 2015 Court of Appeals ruling on the proposed Sandpiper pipeline.

Sincerely,

--

**GRETA LARSON**

Garden manager  
1962 Harbor Street  
Mora, MN 55051  
612-840-8043

**From:** John Kearney  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [savemnwater@nawo.org](mailto:savemnwater@nawo.org); [John Kearney](#)  
**Subject:** Request for Hearing on Monitoring of radioactivity in MN mining waste  
**Date:** Monday, January 07, 2019 12:42:16 PM

---

To: Erik Dahl - State of Minnesota

From: John Kearney - "Electrify Minnesota / Energy jobs Project"

Please add my name to the list of citizen's requesting a hearing on the MEQB proposal to eliminate the monitoring of radioactivity in mining waste.

There is certainly a great deal of radioactive material in that part of Minnesota.

In 1980 there was a serious proposal to mine uranium in northeast Minnesota.

The proposal was defeated as a result of a public information campaign that was carried out by a coalition of Minnesota environmental advocates with funding from Mark and Alida Dayton.

Thank you.



# NORTH AMERICAN WATER OFFICE

PO BOX 174

LAKE ELMO, MN 55042

December 4, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, MN 55101

RE: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

Dear Mr. Dahl:

This comment is in regard to the Proposed Permanent Rules Relating to Environmental Review Mandatory Categories that is before the Office of the Revisor of Statutes. Revisor ID R-4157 Minnesota Rules: Chapter 4410.

The North American Water Office (NAWO) is submitting this Public Comment requesting modification of the proposed rule change. While these described Proposed Rules Governing Environmental Review are primarily jurisdictional and procedural in nature there is a proposed deletion that eliminates a critical level of safety and assurance for public health.

Specifically, NAWO requests the reinstatement of 4410.4400 Subpart 8 Lines 20.1 through 20.3, the Mandatory Environmental Review for the Monitoring of radioactive characteristics in the metallic mineral mining processing permits that are either pending or proposed. The language to be reinstated reads as follows: “For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics; the DNR shall be the RUG.” NAWO further requests whatever formal proceeding is required to ensure that this language is retained.

In the interest of public health and safety, this language must be

  
[www.nawo.org](http://www.nawo.org) email: [gwillc@nawo.org](mailto:gwillc@nawo.org)  
Board of Directors: Laurence LaFond, chair; Ralph Hilgendorf, vice chair;  
Louis Alemayehu Secretary-Treasurer; Sara Axtell

*George Crocker, Executive Director*  
*Lea Foushee, Environmental Justice Director*



maintained within the rules governing Mandatory Environmental Review Categories.

The existence of radioactive materials in Minnesota has been well documented for decades. The first confirmed discovery of uranium in Minnesota was documented in February 1956 in the northwest angle of the state. Evidence provided.

[https://www.newspapers.com/clip/3345679/first\\_discovery\\_of\\_uranium\\_in\\_minnesota/](https://www.newspapers.com/clip/3345679/first_discovery_of_uranium_in_minnesota/)

Any Minnesota copper extraction permit needs a review process to monitor, at a minimum, for the radioactive isotopes uranium and radium that are in the discharges that are discussed by the US EPA on their website. Evidence provided.

TENORM: Copper Mining and Production Wastes -

<https://www.epa.gov/radiation/tenorm-copper-mining-and-production-wastes>

NAWO is aware of no documentation that copper and other deposits of interest in Minnesota are not accompanied by these radioactive isotopes.

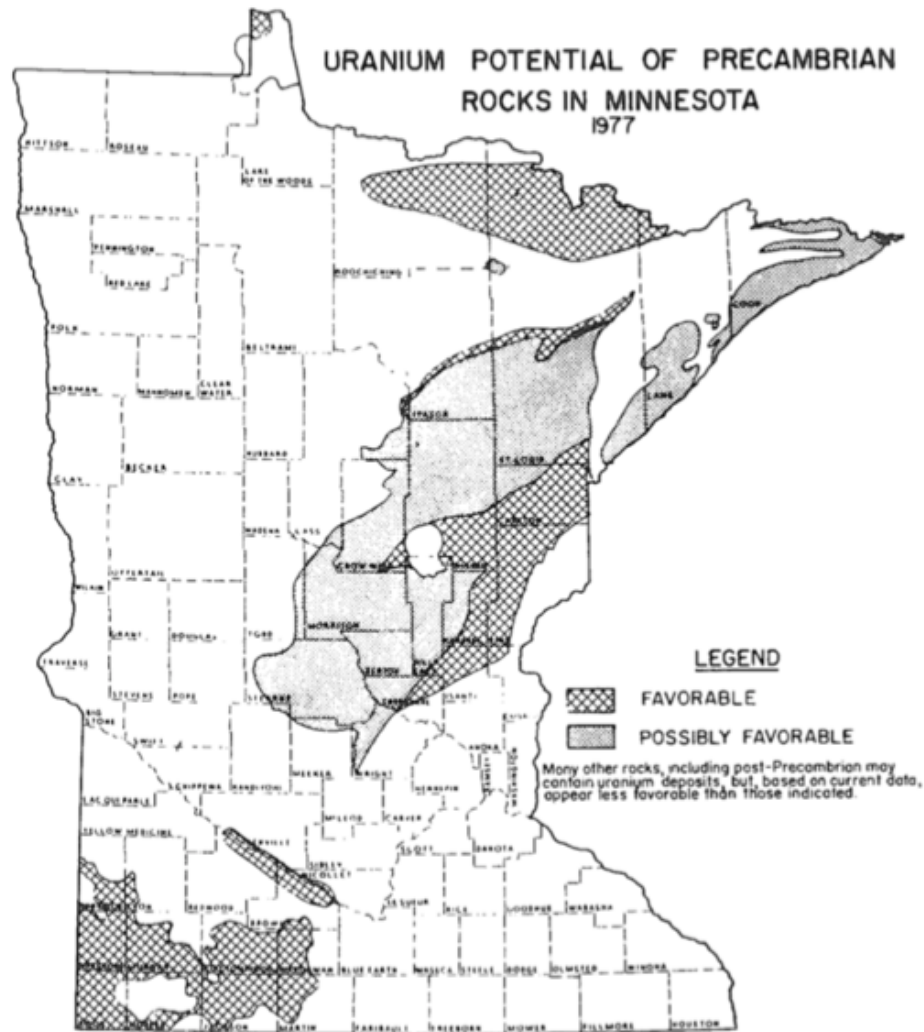
Even the Federal Government acknowledges this radiation exposure to the public from mining metals. So why is the Minnesota Environmental Quality Board attempting to exempt mining companies and state agencies from monitoring for these extremely toxic radioactive elements?

Contrary to statements that are being bandied about by both State government agencies and certain environmental organizations, work published in 1980 by Center for Urban and Regional Affairs (CURA) at the University of Minnesota provides readily available historical documentation regarding the potential location of radioactive elements. Uranium in Minnesota an Introduction to Exploration, Mining and Milling by Dr. Dean Abrahamson and Edward Zabinski portrays a map of significance to all future mining permits as well as those issued and pending currently. See Figure 1. NAWO has also provided a hotlink for the entire Abrahamson/Zabinski report as further documentation as proof that radiological review must continue for all mining activities in Minnesota.

[Uranium in Minnesota: An Introduction to Exploration, Mining, and ...](#)

[www.cura.umn.edu/publications/catalog/e1026](http://www.cura.umn.edu/publications/catalog/e1026)

Figure 1 is an excerpted page (36) from this historical work which maps the locations of potential uranium deposits in Minnesota.



Potential areas based on R.W. Ojakangas, 1976, U.S.E.R.D.A. Contract AT(05-1)-1652

Figure 1: Uranium Potential of Precambrian Rocks in Minnesota

The only minerals currently mined in Minnesota according to the Minnesota Department of Natural Resources (MDNR) website are: iron ore and taconite, clay, sand and gravel, silica sand, granite and limestone, and peat.

<https://www.dnr.state.mn.us/education/geology/digging/mining.html>

“Manganese, copper, nickel, and titanium have also been discovered in the state in minable quantities but are not of high enough quality under today's prices to mine profitably. Exploration for additional resources, such as gold, platinum, diamonds, zinc, and lead, continues today in Minnesota.”

Regarding the profitability of mineral extraction in Minnesota at today's prices, apparently Northmet's Polymet Project didn't get the message.

Obviously, with the false assertion that, “There is no uranium in Minnesota,” there is a tricky bit of paper shuffling going on by state government and mining corporations to gain access to lands and minerals across Minnesota, including in the Ceded Territories protected by 1854 and 1855 Treaties with Minnesota's Anishinaabeg Peoples.

A cursory examination of the Bureau of Land Management's site “The Diggings,” for locating where mining claims are and have been, identifies 11 uranium claims existing in Minnesota. Hotlink evidence provided.

<https://thediggings.com/usa/minnesota/commodities>

A more recent 2009 geological survey at the University of Minnesota in collaboration with the Department of Natural Resources Division of Waters and the Fond du Lac Band of Lake Superior Chippewa describes uranium concentrations in Carleton County of 10 to 20 times background levels, and states that an increased interest in commercial nuclear operations could revitalize interest in exploration and mining of uranium. Evidence provided.

[https://conservancy.umn.edu/bitstream/handle/11299/58760/p6\\_min\\_res%5B1%5D.pdf?sequence=3](https://conservancy.umn.edu/bitstream/handle/11299/58760/p6_min_res%5B1%5D.pdf?sequence=3)

Who is responsible for the outright lie that radiation monitoring during mining for metals in Minnesota is not necessary because there is no uranium in Minnesota?

Add the existing assortment of Mining permits approved and/or pending, overlaid with the wild rice waters and with the locations of uranium bearing rock formations, and another sleight of hand becomes apparent. See Figure 2. The Minnesota Pollution Control Agency generated this Figure 2 through an information request by NAWO.

Adding Figure 1 with Figure 2 provides an image that should alarm any human being who relies on fish, or wild rice, or water not contaminated with radioactive materials, to live.

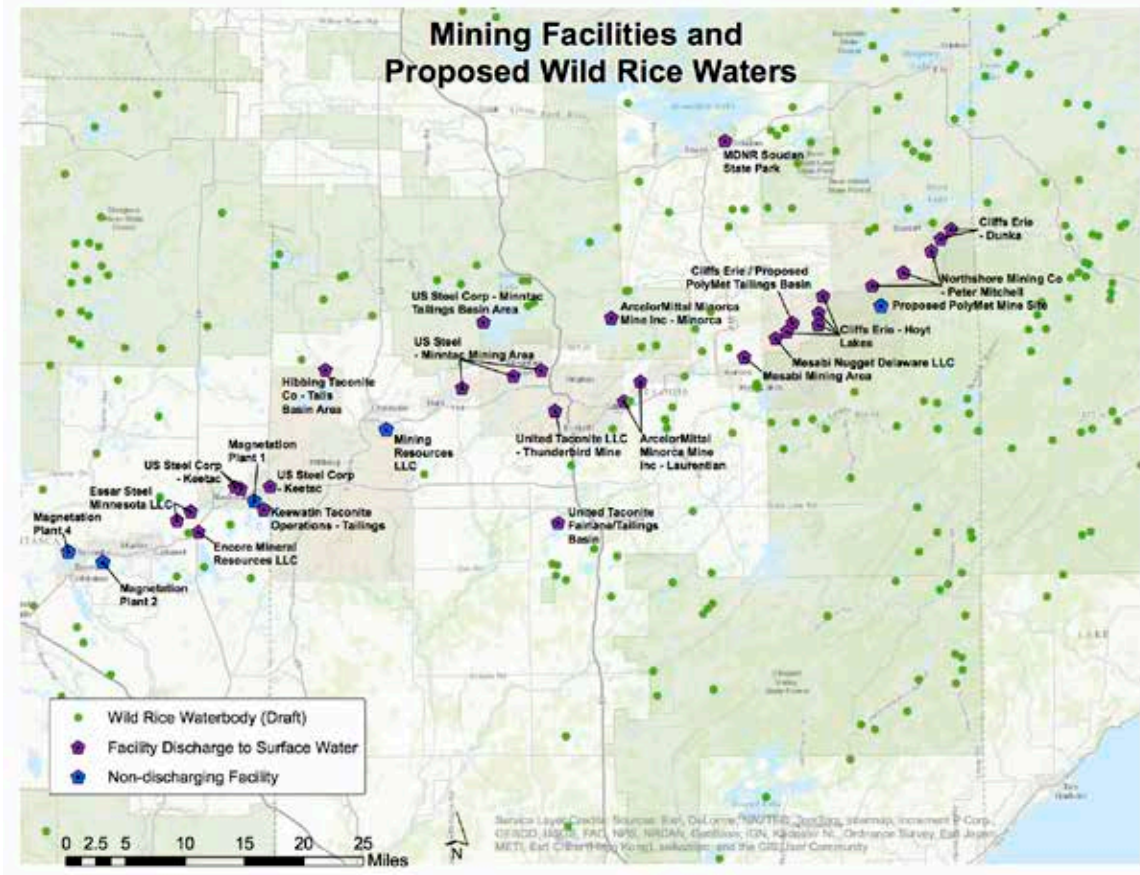


Figure 2

Failure of the Minnesota Environmental Quality Board to retain the language presently contained in 4410.4400 Subpart 8 Lines 20.1 through 20.3, as is hereby requested by the North American Water Office would be an unconscionable dereliction of duty and a murderous betrayal of the public's trust in the Minnesota Environmental Quality Board to protect public health and safety.

Respectfully submitted,

*George Crocker*

George Crocker  
Executive Director

*Lea Foushee*

Lea Foushee  
Environmental Justice Director

**From:** Mark Ray  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Request for a public hearing  
**Date:** Friday, November 16, 2018 3:32:57 PM  
**Attachments:** [image005.png](#)

---

Good Afternoon Erik,

I am writing to formally request a hearing on the proposed rule changes related to Environmental Impact Statements developed for the Environmental Review Program, MN Rules Chapter, 4410; Revisor's ID Number R-04494.

Have a good weekend,



**Mark Ray, PE**

**Director of Public Works/City Engineer, City of Crystal**

763-531-1160 | Main: 763-531-1000 | [www.crystalmn.gov](http://www.crystalmn.gov)

4141 Douglas Dr. N. | Crystal, MN 55422-1696



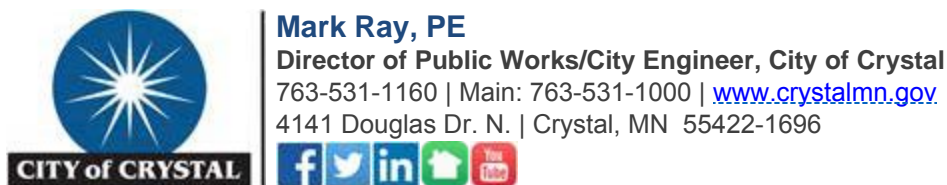
**From:** Mark Ray  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** RE: Request for a public hearing  
**Date:** Tuesday, December 04, 2018 3:09:32 PM  
**Attachments:** [image006.png](#)  
[image011.png](#)  
[image012.png](#)

---

Thanks Erik,

1. Mark Ray, PE  
Director of Public Works/City Engineer, City of Crystal  
4141 Douglas Dr. N. | Crystal, MN 55422-1696

2. I oppose the entire rule.



---

**From:** Dahl, Erik (EQB) [mailto:[erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us)]  
**Sent:** Tuesday, December 4, 2018 3:08 PM  
**To:** Mark Ray <[Mark.Ray@crystalmn.gov](mailto:Mark.Ray@crystalmn.gov)>  
**Subject:** RE: Request for a public hearing

Mark,

Thank you for the email.

Unfortunately, your hearing request does not meet the statutory requirement to be accepted as a hearing request per [Minnesota Statutes 14.25, subdivision 1](#).

Statute requires:

“The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule.”

Please resubmit your hearing request with the required information for it to be considered a valid request.

Thanks,

**Erik Dahl**  
Planning Director

**Minnesota Environmental Quality Board**

520 Lafayette Road  
St. Paul, MN, 55155  
O: 651-757-2364  
[eqb.state.mn.us](http://eqb.state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Mark Ray <[Mark.Ray@crystalmn.gov](mailto:Mark.Ray@crystalmn.gov)>  
**Sent:** Friday, November 16, 2018 3:33 PM  
**To:** Dahl, Erik (EQB) <[erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us)>  
**Subject:** Request for a public hearing

Good Afternoon Erik,

I am writing to formally request a hearing on the proposed rule changes related to Environmental Impact Statements developed for the Environmental Review Program, MN Rules Chapter, 4410; Revisor's ID Number R-04494.

Have a good weekend,



**Mark Ray, PE**  
Director of Public Works/City Engineer, City of Crystal  
763-531-1160 | Main: 763-531-1000 | [www.crystalmn.gov](http://www.crystalmn.gov)  
4141 Douglas Dr. N. | Crystal, MN 55422-1696



**From:** Timothy DenHerder-Thomas  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Request for a public hearing on proposed rules eliminating monitoring of radioactive discharges from mining  
**Date:** Saturday, December 08, 2018 6:44:36 PM  
**Attachments:** [Request for Public hearing - Timothy DenHerder-Thomas.pdf](#)

---

Dear Erik Dahl,

I am writing you to request a Public Hearing on the recent proposal by the Minnesota Environmental Quality Board to change the requirement of monitoring of radioactive discharge in the granting of permits for mining operations. I am concerned about this change, and believe that it is essential that Minnesota continue to monitor radioactive discharge from mining operations, since many proposed mining operations are in areas in which radioactive deposits exist in Minnesota.

Attached please find my formal request for a Public Hearing.

Thank you,

Timothy DenHerder-Thomas  
(612) 250-1621



December 10<sup>th</sup>, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, MN 55101  
[erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us)

Dear Erik Cedarleaf Dahl and the Minnesota Environmental Quality Board,


I am writing to request a Public Hearing into a proposed rule change that would eliminate Mandatory Environmental Review for the monitoring of radioactive characteristics in the metallic mineral mining processing permits. I was recently notified that the Minnesota Environmental Quality Board had proposed eliminating the requirement of monitoring the radioactive discharge in the granting of mining permits on the stated basis that there are no radioactive deposits in Minnesota. However, this assumption is false, as analysis dating as early as the 1950s has showed a number of areas, including many of the areas in which non-ferrous mining activities are currently being proposed, that have deposits of uranium and other radioactive minerals. Just because radioactive deposits in Minnesota have not been considered commercially extractable and have not been mined in Minnesota does not mean these deposits do not exist and cannot pose risk to Minnesotans if they are introduced into surface waters. For further information on historical documentation of radioactive deposits in Minnesota, please review [Uranium in Minnesota: An Introduction to Exploration, Mining and Milling](#) by Dr. Dean Abrahamson and Edward Zabinski, published in 1980 by the Center for Urban and Regional Affairs (CURA) at the University of Minnesota.

The Minnesota Environmental Quality Board is responsible for protecting the environmental quality and health of our Minnesota landscapes; eliminating requirements for monitoring the discharge of radioactive substances due to mining in regions likely to contain radioactive materials is a clear violation of that responsibility. I request that in the Minnesota Environmental Quality Board's recent proposed changes to Minnesota Rules 4410.0200 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600, the proposed changes to Rule 4410.4400 Subpart 8 Lines 20.1 through 20.3 must be rejected, and the original language of the rule must be retained.

I am requesting a public hearing to ensure that rules proposed by the Minnesota Environmental Quality Board protect Minnesotans from the dangers posed by radioactive discharge into our lands and waters.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,



Timothy DenHerder-Thomas  
3100 Longfellow Ave.  
Minneapolis, MN 55407  
(612) 250-1621

**From:** Tim Springer  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Hear request  
**Date:** Sunday, December 09, 2018 1:48:31 PM  
**Attachments:** [MEQB, ltr to, Springer 2018 12 09.pdf](#)

---

Dear Mr. Dahl,

Please see my attached request for a hearing prior to any possible changes to MN Rule 4410.4400.

Thank you,

Tim Springer  
2836 18th Ave S  
Minneapolis, MN 55407  
mobile: 612 355 9600

Tim Springer  
2836 18<sup>th</sup> Avenue South  
Minneapolis, MN 55407  
[thegreenwayguy@gmail.com](mailto:thegreenwayguy@gmail.com)

December 8, 2018

Erik Cerdarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, MN 55101  
[Erik.dahl@state.mn.us](mailto:Erik.dahl@state.mn.us)

Dear Mr. Dahl:

I am writing to request that the Minnesota Environmental Quality Board conduct a hearing prior to any possible action to change Rule 4410.4400. More specifically, Rule 4410.4400 Subpart 8 Lines 20.1 through 20.3 contains the language that I believe must be retained. It reads as follows: "For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics; the DNR shall be the RUG."

It is my understanding that the justification for changing this rule is the false assumption that there are no radioactive materials in Minnesota.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Tim Springer". The signature is written in a cursive style with a prominent dot above the "i" in "Springer".

Tim Springer

**From:** Terry Hokenson  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** RE: Proposed Permanent Rules Relating to Environmental Review Mandatory Categories that is before the Office of the Revisor of Statutes. Revisor ID R-4157 Minnesota Rules: Chapter 4410.  
**Date:** Tuesday, December 11, 2018 11:24:44 AM  
**Attachments:** [Letter-toMEQBrequestinghearing.pdf](#)

---

The attached letter is hereby submitted to the Minnesota Environmental Quality Board.

Terry W. Hokenson  
3352 Prospect Ter. SE  
Minneapolis, MN 5414  
612-331-5104

---

December 11, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, MN 55101

RE: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

By email to erik.dahl@state.mn.us

Dear Mr. Dahl:

This comment concerns the Proposed Permanent Rules Relating to Environmental Review Mandatory Categories that is before the Office of the Revisor of Statutes. Revisor ID R-4157 Minnesota Rules: Chapter 4410.

In cooperation with the North American Water Office (NAWO), I am independently submitting this Public Comment requesting modification of the proposed rule change. While these described Proposed Rules Governing Environmental Review are primarily jurisdictional and procedural in nature there is a proposed deletion that eliminates a critical level of safety and assurance for public health.

Specifically, I request the reinstatement of 4410.4400 Subpart 8 Lines 20.1 through 20.3, the Mandatory Environmental Review for the Monitoring of radioactive characteristics in the metallic mineral mining processing permits that are either pending or proposed. The language to be reinstated reads as follows: "For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics; the DNR shall be the RUG." I further request whatever formal proceeding is required to ensure that this language is retained.

In the interest of public health and safety, this language must be maintained within the rules governing Mandatory Environmental Review Categories. The existence of radioactive materials in Minnesota has been well documented for decades. The first confirmed discovery of uranium in Minnesota was documented in February 1956 in the northwest angle of the state. Evidence provided. [https://www.newspapers.com/clip/3345679/first\\_discovery\\_of\\_uranium\\_in\\_minnesota/](https://www.newspapers.com/clip/3345679/first_discovery_of_uranium_in_minnesota/)

Any Minnesota copper extraction permit needs a review process to monitor, at a minimum, for the radioactive isotopes uranium and radium that are in the discharges that are discussed by the US EPA on their website. Evidence provided. TENORM: Copper Mining and Production

Wastes <https://www.epa.gov/radiation/tenorm-copper-mining-and-production-wastes>

Like NAWO, I am aware of no documentation that copper and other deposits of interest in Minnesota are not accompanied by these radioactive isotopes and demand proof of the contrary in the hearing requested herein.

Even the Federal Government acknowledges this radiation exposure to the public from mining metals. So why is the Minnesota Environmental Quality Board attempting to exempt mining companies and state agencies from monitoring for these extremely toxic radioactive elements?

Contrary to statements that are being bandied about by both State government agencies and certain environmental organizations, work published in 1980 by Center for Urban and Regional Affairs (CURA) at the University of Minnesota provides readily available historical documentation regarding the potential location of radioactive elements. [Uranium in Minnesota an Introduction to Exploration, Mining and Milling](#) by Dr. Dean Abrahamson and Edward Zabinski displays a map of significance to all future mining permits as well as those issued and pending currently. See Figure 1 in the NAWO letter. NAWO also provides a hotlink for the entire Abrahamson/Zabinski report as further expert documentation that radiological monitoring must continue for all mining activities in Minnesota:

[Uranium in Minnesota: An Introduction to Exploration, Mining, and ...](#)

[www.cura.umn.edu/publications/catalog/e1026](http://www.cura.umn.edu/publications/catalog/e1026)

Figure 1 (see below) is an excerpted page (36) from this historical work which maps the locations of potential uranium deposits in Minnesota.

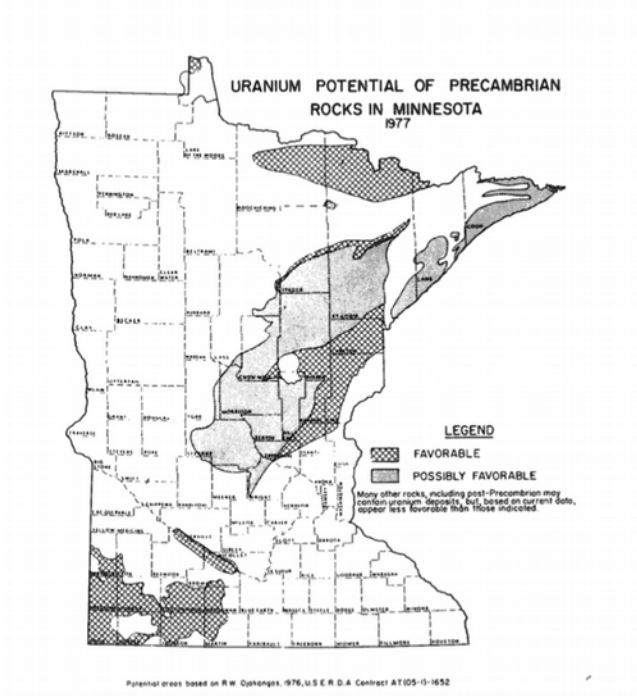


Figure 1: Uranium Potential of Precambrian Rocks in Minnesota

The only minerals currently mined in Minnesota according to the Minnesota Department of Natural Resources (MDNR) website are: iron ore and taconite, clay, sand and gravel, silica sand, granite and limestone, and peat.

<https://www.dnr.state.mn.us/education/geology/digging/mining.html>

“Manganese, copper, nickel, and titanium have also been discovered in the state in minable quantities but are not of high enough quality under today's prices to mine profitably. Exploration for additional resources, such as gold, platinum, diamonds, zinc, and lead, continues today in Minnesota.”

Regarding the profitability of mineral extraction in Minnesota at today's prices, apparently Northmet's Polymet Project didn't get the message. Obviously, with the false assertion that, “There is no uranium in Minnesota,” there is a tricky bit of paper shuffling going on by state government and mining corporations to gain access to lands and minerals across Minnesota, including in the Ceded Territories protected by 1854 and 1855 Treaties with Minnesota's Anishinaabeg Peoples.

A cursory examination of the Bureau of Land Management's site “The Diggings,” for locating where mining claims are and have been, identifies 11 uranium claims existing in Minnesota. Hotlink evidence provided. <https://thediggings.com/usa/minnesota/commodities>

A more recent 2009 geological survey at the University of Minnesota in collaboration with the Department of Natural Resources Division of Waters and the Fond du Lac Band of Lake Superior Chippewa describes uranium concentrations in Carleton County of 10 to 20 times background levels, and states that an increased interest in commercial nuclear operations could revitalize interest in exploration and mining of uranium. Evidence provided. [https://conservancy.umn.edu/bitstream/handle/11299/58760/p6\\_min\\_res%5B1%5D.pdf?sequence=3](https://conservancy.umn.edu/bitstream/handle/11299/58760/p6_min_res%5B1%5D.pdf?sequence=3)

Who is responsible for the rank falsehood that radiation monitoring during mining for metals in Minnesota is not necessary because there is no uranium in Minnesota? Add the existing assortment of mining permits approved and/or pending, overlaid with the wild rice waters and with the locations of uranium bearing rock formations, and another sleight of hand becomes apparent. See Figure 2. The Minnesota Pollution Control Agency generated this Figure 2 through an information request by NAWO.

Viewing Figure 1 with Figure 2 provides an image that should alarm any human being who relies on fish, or wild rice, or water not contaminated with radioactive materials, to live.

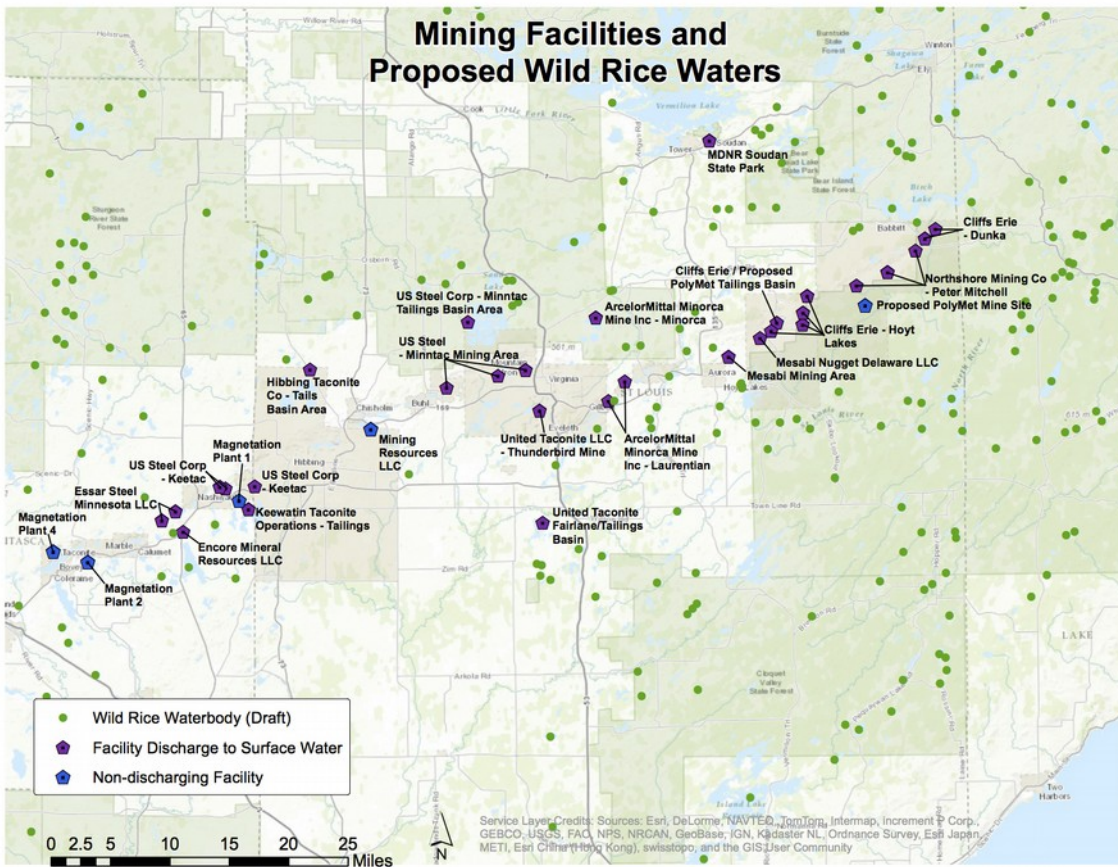


Figure 2

Failure of the Minnesota Environmental Quality Board to retain the language presently contained in 4410.4400 Subpart 8 Lines 20.1 through 20.3 would be an unconscionable dereliction of duty and betrayal of the public’s trust in the Minnesota Environmental Quality Board to protect public health and safety.

Respectfully submitted,

*Terry W. Hokenson*

Terry W. Hokenson  
Minnesota citizen



**From:** Claudia Foussard  
**To:** [Dahl, Erik \(EQB\)](#)  
**Date:** Monday, December 17, 2018 9:14:18 AM

---

Claudia Foussard  
75 S. Wheeler St.  
St. Paul , Mn 55105

December 17, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St. Paul, Mn 55101

RE: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules,  
4410.4600

Dear Mr. Dahl:

This comment is in regard to the Proposed Permanent Rules Relating to Environmental Review Mandatory Categories that is before the Office of the Revisor of the Statues. Revisor ID R-4157 Minnesota Rules; Chapter 4410

I am requesting a Public Hearing on this rule change. I support the comment of the North American Water Office and their concern about the proposed deletion of the mandatory monitoring for the radioactive emissions from copper mining in Minnesota.

Sincerely,

Claudia Foussard

**From:** Travis Fristed  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Nick McCabe](#); [Chuck Brandel](#)  
**Subject:** Public Hearing Request + Comments, Revisor's ID #RD-04157  
**Date:** Monday, December 17, 2018 3:56:49 PM  
**Attachments:** [LTR\\_edahl-121418.pdf](#)

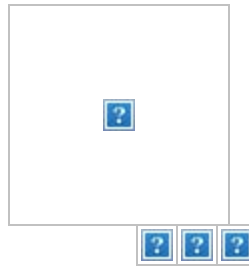
---

Mr. Dahl,

Please see the attached hearing request and comments pertaining to the EQB's proposed rule amendments.

**Travis Fristed PWS**  
Associate Principal, Practice Group  
Leader

7900 International Drive, Suite 550  
Minneapolis, MN 55425  
P: 952.426.0699  
C: 952.500.1180  
[travis.fristed@is-grp.com](mailto:travis.fristed@is-grp.com)



**Architecture | Engineering | Environmental | Planning**

December 14, 2018

Environmental Quality Board  
Attn: Erik Cedarleaf Dahl  
520 Lafayette Road  
St. Paul, MN, 55101  
[erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us)

Re: Written Request for Public Hearing of Proposed Environmental Review Rule Changes  
Revisor's ID # RD-04157

Mr. Dahl,

This letter is a written request for the EQB to host a public hearing regarding the proposed amendment to rules governing environmental review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

On behalf of our clients, we respectfully object to the proposed rule amendments as they result in an unnecessary environmental review and financial burdens on project proposers, local government units, and RGUs. Specifically, there are several deficiencies in Part 4410.4300 subpart 27. Wetlands and public waters.

The proposed addition of "*a total of one acre or more of wetlands*" will increase costs to project proposers and local governments units due to the additional staff time and resources needed for initial data/information gathering to determine and quantify post-construction wetland impacts (if any) from indirect impacts, such as partial drainage. In some cases, partial drainage of wetlands does not result in a measurable change to non-wetland, wetland type, plant community, or functions and values. The additional time needed to prepare an EAW may also jeopardize eligibility or delay third party funding commitments and government programs that support the proposed project.

Further, the proposed one acre or more wetland impact threshold when combined with "*if any part of the wetland basin is within*" language creates an over reaching and unnecessary EAW result. Under this language, the entire one acre or more wetland impact could occur outside of these locations, however, a small portion of the non-impacted wetland basin may be located within these features, and thus would require an EAW. The following deletion in language is recommended to clarify the applicability of this EAW threshold:

*B. For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands ~~if any part of the wetland basin is within a shoreland area, delineated floodplain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or Mississippi headwaters area~~, the local government unit is the RGU.*

We look forward to discussing this issue in greater detail and providing projects examples at the upcoming public hearings.

Sincerely,



Travis Fristed, PWS, WDC  
Associate Principal, Practice Group Leader  
Environmental Services Group

**From:** Joe K. Triplett  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [joe.triplett@chisagocounty.us](mailto:joe.triplett@chisagocounty.us)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, December 18, 2018 7:14:50 AM  
**Attachments:** [EQB Mandatory EAW Rule Change Letter 12-18-19.pdf](#)  
**Importance:** High

This message was sent securely using Zix®

Please see the attached comment letter to the EQB regarding the proposed rule changes.

Thank you



**Joe Triplett, P.E.**  
Director of Public Works | County Engineer  
Direct Dial: 651.213.8708

**Chisago County Public Works**  
Mailing: 313 N. Main St. - Room 400 | Center City, MN 55012  
Location: 31325 Oasis Road | Center City, MN 55012  
Main: 651.213.8700 | Fax: 651.213.8772

-----  
This message was secured by [ZixCorp](#)®.



**CHISAGO COUNTY**  
**DEPARTMENT OF PUBLIC WORKS**  
Mail: 313 North Main Street, Room 400  
Center City, MN 55012-9863  
Office: 31325 Oasis Road, Center City, MN 55012-9863  
Phone (651) 213-8700  
Fax (651) 213-8772

Exhibit I.22.

Joe Triplett, P.E.  
Director | County Engineer

Kyle Ludwig, P.E.  
Assistant County Engineer

Paul Gibson, L.S.  
County Surveyor

Bruce Lind  
Maintenance Superintendent

Ben Utech  
Traffic Operations Manager

Cindy V. Johnson  
Finance | Office Manager

December 18, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

**RE: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300**

Dear Mr. Dahl:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

A. Chisago County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

B. Chisago County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural

Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Chisago County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range

and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).



9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

C. Requested Actions

1. **Chisago County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Chisago County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me directly at 651.213.8708 or by email at [joe.triplett@chisagocounty.us](mailto:joe.triplett@chisagocounty.us).

Sincerely,



Joe Triplet, P.E.  
Director | County Engineer  
Chisago County Public Works

**From:** Karin Grandia  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, December 18, 2018 9:19:14 AM  
**Attachments:** [20181218091809272.pdf](#)

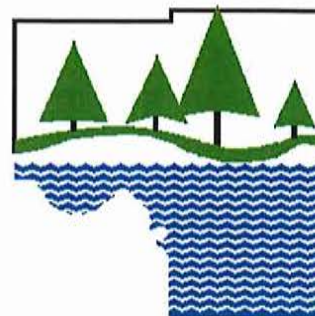
---

Please see the attached letter regarding the mandatory Environmental Assessment Worksheet category rule changes.

Karin Grandia, P.E.  
Itasca County Engineer  
Itasca County Transportation Department  
123 NE 4<sup>th</sup> Street  
Grand Rapids, MN 55744  
218-327-7389 office  
218-244-2313 cell  
[Karin.grandia@co.itasca.mn.us](mailto:Karin.grandia@co.itasca.mn.us)

# ITASCA COUNTY

Transportation Department  
 123 NE 4<sup>th</sup> Street, Courthouse  
 Grand Rapids, MN 55744-2600  
 Office (218) 327-2853 Fax (218) 327-0688



December 18, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Itasca County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Itasca County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would

avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Itasca County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this

mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and



Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
  
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the

EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Itasca County Transportation Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.

2. Itasca County Transportation Department recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross-section of ~~40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the

Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at 218-327-2853.

Sincerely,



Karin Grandia, P.E.  
Itasca County Engineer

**From:** Alice West  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** request for public hearing  
**Date:** Tuesday, December 18, 2018 10:37:26 AM

---

Dear Mr. Dahl,

I am requesting a public hearing about the proposed changes to Minnesota Rule 4410.4400 Subpart 8 Lines 20.1 through 20.3. I hope your agency will see clearly that by retaining the language in this rule, you are protecting the citizens of Northeastern Minnesota radioactive isotopes of uranium and radium.

Please let me know when this hearing is scheduled so that I can make an official comment.

Thank you,

Alice West  
315 1st Ave. East, #11  
Grand Marais, MN 55604  
alice.m.west@gmail.com

**From:** lfoushee@nawo.org  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Fwd: radioactive waste in water  
**Date:** Tuesday, December 18, 2018 12:44:45 PM

---

Begin forwarded message:

**From:** David Ratner <[davidratner1.0@gmail.com](mailto:davidratner1.0@gmail.com)>  
**Subject:** radioactive waste in water  
**Date:** December 18, 2018 at 8:04:19 AM CST  
**To:** [eric.dahl@state.mn.us](mailto:eric.dahl@state.mn.us)  
**Cc:** [savemnwater@nawo.org](mailto:savemnwater@nawo.org)

Mr. Dahl,

I, David J. Ratner of 4013 Kipling Ave, Edina MN 55416, am writing to request a public hearing on revisions to rules regarding the monitoring of radioactive waste in public water. this is a very bad idea and would be doing the state an extreme disservice by allowing this rule to take place.

Qapla',  
David

**From:** Brian M. Ketring  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Jeffrey D. Pelowski](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, December 18, 2018 1:54:07 PM  
**Attachments:** [EQB Hearing Letter 2018.doc](#)

---

Attached is our letter requesting a public hearing regarding the Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300.

**Brian Ketring**

County Engineer  
Roseau County Highway Department  
(218) 463-2063

407 5<sup>th</sup> Ave NW  
Roseau MN 56751

Phone: (218) 463-2063  
Fax: (218) 463-2064



Brian Ketring – County Engineer  
Daryle Dahl – Asst. Eng. Const.  
Ryan Murray – Asst. Eng. Maint.

January 16, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Mr. Dahl:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Roseau County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Roseau County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to "types 3 through 8



wetlands... excluding public waters wetlands." The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states "public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas." In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.

- b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota's environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that "a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents." The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Roseau County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EOB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review**. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**" USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that

triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act.

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither of these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus, the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Roseau County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of

the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.

2. Roseau County Highway Department recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such*

*it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

- For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.
- i. Impacted wetlands are types 6, 7 or 8; and
  - ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
  - iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
  - iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,



Brian Ketring  
Roseau County Engineer

**From:** hampton.sj  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [savemnwater@nawo.org](mailto:savemnwater@nawo.org)  
**Subject:** Public Hearing  
**Date:** Tuesday, December 18, 2018 10:12:16 PM

---

Dear Mr. Dahl,

It has come to my attention that the Minnesota Environmental Quality Board is seeking to eliminate the monitoring of radioactive materials in mining waste. This seems to be an omission tailor-made to pave the way for the Polymet mine proposed in northern Minnesota. This rule change is being requested based on the false assertion that there are no radioactive materials in Minnesota. In fact we have abundant documentation that radioactive materials are in proximity to the minerals POLYMET wants to mine. Not monitoring such radioactivity would not make the materials disappear, it would merely hide them from Minnesotans, who have every right to know what they are being exposed to should that mine come to pass. Polymet should also be held financially accountable for the management and clean-up of such mining wastes; they should not be allowed to feign ignorance of contaminants because they conveniently didn't have to be monitored. That just leaves the door open for Polymet to take what they want and leave Minnesotans to foot the bill for the mess Polymet made. The handful of jobs Polymet can offer are not worth the centuries of environmental devastation their mine is certain to usher in. There must be a public hearing on the MEQB's proposed change. Minnesotans should have a say in whether or not we are willing to accept an end to monitoring of radioactive materials from mining waste, since we're the ones who will suffer from their presence. I, for one, am not willing to accept such a risk.

Sincerely,

Sarah Hampton  
1101 Linden St. S.  
Northfield, MN 55057

Sent via the Samsung Galaxy S7, an AT&T 4G LTE smartphone

**From:** Andrew Witter  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Wednesday, December 19, 2018 9:50:37 AM  
**Attachments:** [image001.png](#)  
[EQB 2018 rule revision comment letter Dec 18.pdf](#)

---

Please see attached letter.



**Andrew J. Witter, P.E.**  
Sherburne County Public Works Director / County Engineer  
Work: (763) 765-3302  
[www.co.sherburne.mn.us](http://www.co.sherburne.mn.us)  
[www.facebook.com/SherburneCountyMN](https://www.facebook.com/SherburneCountyMN)

NOTICE: Unless restricted by law, email correspondence to and from Sherburne County government offices may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.





## Public Works

13880 Business Center Drive  
Suite 100  
Elk River, MN 55330-4668  
763-765-3300  
763-765-3366 Fax

December 19, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

A. Sherburne County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

- Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

B. Sherburne County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):
- In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Sherburne County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review**. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**" USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.
- The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the

process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Sherburne County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Sherburne County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide

environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.

3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

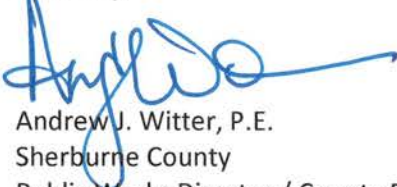
Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at 763.765.3300, or [Andrew.Witter@co.sherburne.mn.us](mailto:Andrew.Witter@co.sherburne.mn.us)

Sincerely,



Andrew J. Witter, P.E.  
Sherburne County  
Public Works Director / County Engineer

**From:** Dan Sauve  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comments  
**Date:** Wednesday, December 19, 2018 3:34:05 PM  
**Attachments:** [L12192018 EOB rules.pdf](#)

---

Erik and Denise,

Attached is Clearwater County's comments and request for a hearing on the Proposed Rules Relating to Environmental Review: Mandatory Categories.

Please respond back that you did receive this and let me know if you want a copy mailed to you.

Thank you

Dan Sauvé, P.E.  
County Engineer  
Clearwater County  
113 7th St. NE  
Bagley, MN 56621  
Phone (218) 694-6132  
[dan.sauve@co.clearwater.mn.us](mailto:dan.sauve@co.clearwater.mn.us)

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited.





213 Main Avenue North Bagley, Minnesota 56621  
Phone: 218.694.6520

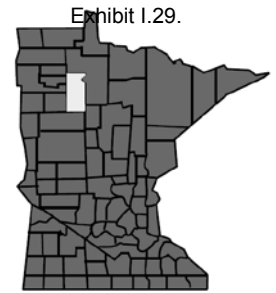


Exhibit I.29.

[www.clearwater.mn.us](http://www.clearwater.mn.us)

December 19, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Clearwater County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Clearwater County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to

**An Equal Opportunity Employer**

conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the

preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Clearwater County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs

for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics

covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
  
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to

local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

11. As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.
12. From the perspective of the Environmental Services Department, increasing the need for the number of EAWs for local construction projects may quickly overwhelm Environmental Services staff when the local government is determined to be the RGU for the project. In the case of many small counties such as Clearwater, the relatively small-scale projects that occur rarely trigger environmental review processes, therefore there are no staff prepared to fulfill a sudden and substantial increase in the number of RGU designations. If the scope of environmental review is expanded to include numerous road construction projects that previously had not triggered EAWs, then local government staff capacity will need to increase to fulfill RGU responsibilities.

C. Requested Actions

1. **Clearwater County requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Clearwater County recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part [4410.4600](#), subpart 14, item E, or subpart 17, ~~DNR~~ or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands,~~ if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact Dan Sauvé, County Engineer at (218) 694-6132, dan.sauve@co.clearwater.mn.us.

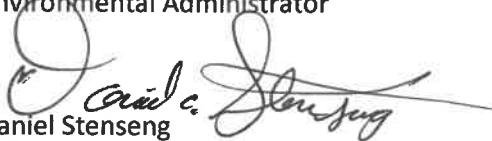
Sincerely,



Dan Sauvé, P.E.  
County Engineer



Daniel Hecht  
Environmental Administrator



Daniel Stenseng  
County Board Chair



**From:** Richard Heilman  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** "Mandatory Category Rulemaking: Comment"  
**Date:** Thursday, December 20, 2018 3:08:25 PM  
**Attachments:** [Mandatory Category Rulemaking Comments.pdf](#)

---

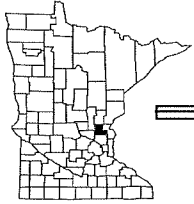
Denise and Erik

Please see the attachment for Isanti County's comments regarding proposed amendment to rules governing environmental review.

Contact me with any questions.

Thank You

Richard Heilman, PE  
Isanti County Engineer  
232 N Emerson Str  
Cambridge, MN 55008  
763-689-1870



**ISANTI COUNTY HIGHWAY DEPARTMENT**

232 NORTH EMERSON STREET  
CAMBRIDGE, MINNESOTA 55008  
TEL.: 763-689-1870 FAX: 763-689-9823

RICHARD HEILMAN, PE  
COUNTY ENGINEER

TONY HENNEN, PE  
ASST. COUNTY ENGINEER

TIM CARLSON  
MAINTENANCE SUPERINTENDENT

DIAN TUFENK  
ACCOUNTANT

December 20, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

**Subject:** Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Mr. Dahl:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Isanti County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Isanti County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**

from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Isanti County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose

of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Isanti County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Isanti County Highway Dept. recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,



Richard Heilman, PE  
Isanti County Engineer  
232 N. Emerson Street  
rheilman@highway.co.isanti.mn.us  
763-689-1870

**From:** Nick Klisch  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 21, 2018 7:59:43 AM  
**Attachments:** [EQB Mandatory Category Rulemaking Comment Letter - Cottonwood County.pdf](#)

---

Please see attached letter which includes comments by Cottonwood County.

Thank you!

**Nick Klisch, PE**

Cottonwood County Public Works Director

1355 9<sup>th</sup> Ave

Windom, MN 56101

Public Works Phone: 507-831-1389

Direct Phone: 507-832-8811

Fax: 507-831-2367



December 21, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. COTTONWOOD County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. COTTONWOOD County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**

from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):
 

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].
4. **The proposed revisions to subpart 27 item B would result in new costs** for COTTONWOOD County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose

of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **COTTONWOOD County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. COTTONWOOD County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without*

*regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and

- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me INSERT PHONE/EMAIL CONTACT INFO.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Klisch', with a stylized flourish extending to the right.

Nick Klisch, County Engineer/Public Works Director  
Cottonwood County



**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Fw: "Mandatory Category Rulemaking: Comment"  
**Date:** Wednesday, December 26, 2018 10:18:53 AM  
**Attachments:** [Tim Becker.vcf](#)  
[EQB 2018 Rule Revisions Comments Sibley County.pdf](#)

---

---

**From:** Tim Becker <TimB@co.sibley.mn.us>  
**Sent:** Monday, December 24, 2018 9:04 AM  
**To:** Wilson, Denise (EQB)  
**Subject:** "Mandatory Category Rulemaking: Comment"

Denise,

Please see attached letter regarding the proposed subject.

Tim Becker  
PublicWorks Director

Sibley County Public Works  
111 8th Street  
PO BOX 897  
Gaylord, MN 55334  
Office: 507.237.4092  
Direct: 507.237.4115  
Mobil: 507-317-7131  
Fax: 507.237.4356

[timb@co.sibley.mn.us](mailto:timb@co.sibley.mn.us)

December 24, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Sibley County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Sibley County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

*File Path: S:\Public\_Works\Highway\State\_Aid\EQB\EQB 2018 RULE REVISION COMMENT LETTER SIBLEY COUNTY.doc*

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of

alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Sibley County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program.** This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no

environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact this category as revised would have on project delivery timelines,** likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit. The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).
9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to

local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Sibley County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.

2. Sibley County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for~~ public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.



EQB

- 8 -

12.24.18

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,

SIBLEY COUNTY PUBLIC WORKS



Timothy Becker  
 Director of Public Works  
[timb@co.sibley.mn.us](mailto:timb@co.sibley.mn.us)  
 Phone: 507.237.4092

**From:** Brian Giese  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, December 27, 2018 10:08:04 AM  
**Attachments:** [EQB Comment Letter.pdf](#)

---

Please see attached letter pertaining to proposed amendments to Rules 4410.4300.

Thank you.

**Brian Giese**  
Pope County Engineer  
320-634-7746

P O P E MINNESOTA  
C O U N T Y

*Enhancing quality of life by providing innovative  
services for our community every day.*

BRIAN GIESE  
COUNTY ENGINEER

December 18, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing  
Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to provide comments regarding the proposed amendments to Minnesota Rule 4410.4300 as well as request a **public hearing** for the proposed amendments as called for in the November 13, 2018 public notice.

Pope County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. The proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision goal of streamlining. Subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to "types 3 through 8 wetlands... excluding public waters wetlands." The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states "public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas." In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.

- b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
- c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR).

The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Pope County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of

alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

Requested Actions:

1. **Pope County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Pope County Highway Department recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.



3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental*

*impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at 320-634-7745 or [brian.giese@co.pope.mn.us](mailto:brian.giese@co.pope.mn.us) .

Sincerely,



Brian Giese, County Engineer  
Pope County

**From:** Teich, Jodi  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, December 27, 2018 11:39:11 AM  
**Attachments:** [SHWYPrint0118122712570.pdf](#)

---

Attached please find Stearns County's comments on proposed EQB changes, including a request for a public hearing.

Jodi L. Teich, P.E.  
Stearns County Engineer  
455 28th Avenue South  
Waite Park, MN 56387  
Phone: (320) 255.6180  
Fax: (320) 255.6186  
[jodi.teich@co.stearns.mn.us](mailto:jodi.teich@co.stearns.mn.us)

# COUNTY OF STEARNS



## *Department of Highways*

PO Box 246 • St Cloud, MN 56302  
(320) 255-6180 • FAX (320) 255-6186

**JODI TEICH, P.E.**  
*Highway Engineer*

December 27, 2018

**JEFF MILLER, P.E.**  
*Asst. Highway Engineer*

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

**MATT ZINNIEL**  
*Maintenance Superintendent*

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Mr. Dahl:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

A. Stearns County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

B. Stearns County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and

federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. The types of wetlands included have been expanded to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts. Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The existing rule allows a threshold area of impact up to five acres depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, this clause eliminates relatively few of our county highway projects that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives. If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking described in the associated Statement of Need and Reasonableness (SONAR).** The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):
 

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].
4. **The proposed revisions to subpart 27 item B would result in new costs for Stearns County as well as other Minnesota cities, counties, and project proponents.** The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would cost Minnesota counties at least an additional \$2,000,000 or more per year (aggregated statewide) for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.

Per Minn. R. 14.131 the agency must consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a consultation

with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.

5. **In addition to the expense of preparing an EAW for additional projects, one of our biggest concerns is the negative impact this category as revised would have on project delivery timelines, likely leading to project implementation delays of 12 months or more.** Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

The time required to complete the EAW process may also increase for all projects conducting environmental review under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category (i.e. they only trigger an EAW due to impacts to public waters or wetlands) does not increase environmental protection because it duplicates environmental review efforts already required by state and federal regulations governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts.** The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, there are typically few realistic alternatives to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544).

EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. **Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”** The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly



substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Stearns County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. **Stearns County Highway Department recommends that EQB delete 4410.4300 subpart 27 from the rules in its entirety** to eliminate duplication with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. **If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:**

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G,

unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

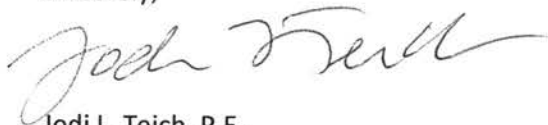
Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at (320) 255-6180, or by email at [jodi.teich@co.stearns.mn.us](mailto:jodi.teich@co.stearns.mn.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Jodi Teich". The signature is fluid and cursive, with the first name "Jodi" and last name "Teich" clearly distinguishable.

Jodi L. Teich, P.E.  
Stearns County Engineer

**From:** Andi Moffatt  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Cc:** [Alison Harwood](#)  
**Subject:** Mandatory Category Rulemaking Comment  
**Date:** Thursday, December 27, 2018 4:03:23 PM  
**Attachments:** [image602d2f.PNG](#)  
[MEMO - 122718 - EQB.pdf](#)

---

**Andi Moffatt**, PWS  
Environmental Planning & Natural Resources Group Manager, Principal  
763.287.7196 (o) | 612.360.1301 (m)  
WSB | [wsbeng.com](#)



*This email, and any files transmitted with it, is confidential and is intended solely for the use of the addressee. If you are not the addressee, please delete this email from your system. Any use of this email by unintended recipients is strictly prohibited. WSB does not accept liability for any errors or omissions which arise as a result of electronic transmission. If verification is required, please request a hard copy.*



## Memorandum

**To:** MnEQB

**From:** Andi Moffatt, WSB  
Alison Harwood, WSB

**Date:** December 27, 2018

**Re:** Comments on Proposed Permanent Rules Pertaining to Environmental Review

We offer the following comments as practitioners of completing environmental review on behalf of responsible government units. These views are WSB's but are based on experience working with RGU's.

Rule Citation	Subject	Comments
4410.4300 – Subp. 27 Public waters, public waters wetlands, and wetlands B	An EAW will be required for:  Projects that will cause and impact to a total of 1 acre or more of wetlands within the shoreland overlay, floodplain, scenic rivers district, MN project Riverbend Area, or the Mississippi River headwaters area.	This proposed rule change is concerning and will not streamline the process. <ul style="list-style-type: none"> <li>• This change will result in RGUs completing more EAWs and there does not seem to be an environmental benefit.</li> <li>• The rule change seems redundant in its environmental protection, as wetland impacts are already subject to regulatory programs review (WCA, USACE Section 404, etc.) which require wetland impacts avoidance and minimization.</li> <li>• We do recognize the need to make this section less confusing. However, we recommend removing this change to the rules as needing an EAW when you impact one acre or more of wetlands is onerous and already covered with WCA rules. We suggest a higher threshold such as three acres for non-transportation projects</li> </ul>

701 XENIA AVENUE S | SUITE 300 | MINNEAPOLIS, MN | 55416 | 763.541.4800 | WSBENG.COM

		and five acres for transportation project.
4410.4300 – Subp. 22 Highway Projects B	An EAW will be required for:  Construction of additional through lanes or passing lanes on an existing road for a length of two or more miles, exclusive of auxiliary lanes. The DOT or local governmental unit is the RGU.	This proposed rule change is positive and will streamline some processes for road projects.  <ul style="list-style-type: none"> <li>• This change relaxes the threshold to trigger an EAW from 1 mile or more, to 2 miles (exclusive of auxiliary lanes). This is a beneficial change as it will reduce redundancy in the environmental review process.</li> </ul>

We are requesting a hearing on the matter for these rules and would like to see the proposed language for MR 4410.4300, Subp 27 revised as noted.

**From:** Michelle Shaw  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, December 27, 2018 11:23:41 PM

---

To Mr. Dahl and Ms. Wilson,

I'm writing to ask for hearings to be held in public throughout the state on the Proposed Permanent Rules Relating to Environmental Review.

I do not agree with the following rules that have been proposed:

4410.4300 (Mandatory EAW Categories)

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

I also question the legality of the proposed changes to rules 4410.4300 and 4410.4400, especially in regards to their compliance with existing law and court ruling.

Thank you for your time and consideration.

Sincerely,

Michelle Shaw

3110 Pierce St. NE

Minneapolis, MN 55418

612-781-3920

**From:** Ulla Nilsen  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 11:02:55 AM

---

Dear Mr. Dahl and Ms. Wilson,

Please allow public hearings on the Proposed Permanent Rules Relating to Environmental Review. These rules are of the utmost importance for our water and the health of our communities, and I urge you to allow hearings to proceed around the state.

These are the proposed rules that are concerning to me:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

Additionally, I question the legality of the changes proposed to 4410.4300 and 4410.4400 regarding to their compliance with existing Minnesota law.

Sincerely,

Ulla Nilsen

4322 Pillsbury Ave S

Minneapolis, MN 55409



**From:** Kriss Wells  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 1:50:02 PM

---

Mr. Dahl and Ms. Wilson:

I dislike proposed rules: 4410.43 EAW Categories  
4410.05 RGU Selection  
4410.44 EIS Categories

We also need to have public hearings around the state regarding the Proposed Rules Relating to Environmental Review.

Sincerely,  
Kriss Wells  
3929 Elliot Ave.  
MPLS, MN 55407

**From:** Brian PaStarr  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 3:25:28 PM

---

To: Mr. Dahl and Ms. Wilson,

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed rules:

4410.0500 Subp. 6 (RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Brian C. PaStarr  
2201 22nd Ave. S.  
Mpls. Mn.  
55404

**From:** Lyndon Robjent  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 4:01:38 PM  
**Attachments:** [EOB 2018 rule revisions - comment letter - CCPW.pdf](#)

---

Please find attached comments from Carver County Public Works

Thank-you

Lyndon Colebrook-Robjent, P.E. | **Public Works Division Director, County Engineer** |  
**Carver County Public Works**  
11360 Highway 212, Suite 1, Cologne, MN 55322  
Office: 952.466.5206 | Cell: 612-247-6348 | Fax: 952.466.5223  
Email: [lrobjent@co.carver.mn.us](mailto:lrobjent@co.carver.mn.us)  
Web: [www.co.carver.mn.us](http://www.co.carver.mn.us)

Disclaimer: Information in this message or an attachment may be government data and thereby subject to the Minnesota Government Data Practices Act, may be subject to attorney-client or work product privilege, may be confidential, privileged, proprietary, or otherwise protected. The unauthorized review, copying, retransmission, or other use or disclosure of the information is strictly prohibited. If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system.



December 28, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Carver County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Carver County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Carver County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on**

**units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they

streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the



Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Carver County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Carver County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these*

*common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part [4410.4600](#), subpart 14, item E, or subpart 17, ~~DNR~~ or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross-section of 40-percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for~~ public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part [4410.4600](#), subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and

- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me @ 952-466-5200/lrobject@co.carver.mn.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Robjant". The signature is stylized with a large initial "R" and a long, sweeping tail.

Lyndon C. Robjant, Public Works Director  
Carver County

**From:** riksvien  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Re: Mandatory Category Rulemaking: Comment  
**Date:** Friday, December 28, 2018 10:27:29 PM

---

To: Mr. Dahl and Ms. Wilson,

We are writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

We object to the proposed rules:

- 4410.0500 Subp. 6 (RGU Selection Procedures)
- 4410.4400 (Mandatory EIS Categories)

In addition, we question the legality of the proposed changes to 4410.4300 and 4410.4400 in regard to their compliance with existing law and court ruling.

Sincerely,

Hendrik Svien and Laurel Bangs  
2221 Minneapolis Avenue  
Mpls. MN55406

On Fri, Dec 28, 2018 at 3:25 PM Brian PaStarr <[bpastarr@gmail.com](mailto:bpastarr@gmail.com)> wrote:

To: Mr. Dahl and Ms. Wilson,

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed rules:

4410.0500 Subp. 6 )RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Brian C. PaStarr  
2201 22nd Ave. S.  
Mpls. Mn.  
55404

**From:** Laurie Bangs  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Saturday, December 29, 2018 9:31:09 AM

---

To: Mr. Dahl and Ms. Wilson,

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed rules:

4410.0500 Subp. 6 (RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Laurel Bangs  
2221 Minneapolis Ave  
Minneapolis, MN 55406  
612-963-8807

--

*“Whatever we build in the imagination will accomplish itself in the circumstances of our lives.” - W.B. Yeats*

**From:** Genna Mastellone  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Saturday, December 29, 2018 7:26:50 PM

---

Hi Mr. Dahl,

I am writing to request public hearings around the state on the proposed changes to the Permanent Rules relating to Environmental Review. I object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Genna Mastellone

3735 Harriet Ave S, Mpls, MN, 55409

**From:** Margaret O'Connor  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Request for public hearing re. EQB changes to environmental review rules  
**Date:** Sunday, December 30, 2018 6:21:20 AM  
**Attachments:** [EQB rules review request.docx](#)

---

December 30, 2018

Dear Mr. Dahl and Ms. Wilson,

I am writing to request a public hearing regarding the Proposed Permanent Rules Related to Environmental Review.

In particular sections:

4410.0500

4410.4300

4410.4400

The later two (4410.4300 and 4410.4400) in particular seem an overreach of the process.

Sincerely,

Margaret O'Connor

2607 W. 55<sup>th</sup> St.

Minneapolis, MN 55410

December 30, 2018

Dear Mr. Dahl and Ms. Wilson,

I am writing to request a public hearing regarding the Proposed Permanent Rules Related to Environmental Review.

In particular sections:

4410.0500

4410.4300

4410.4400

The later two (4410.4300 and 4410.4400) in particular seem an overreach of the process.

Sincerely,

Margaret O'Connor  
2607 W. 55<sup>th</sup> St.  
Minneapolis, MN 55410



**From:** Scott Russell  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, December 30, 2018 11:23:55 AM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Scott Russell  
3124 44th Ave. S.  
Minneapolis, MN 55406

**From:** Martha Delaney  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Fwd: Mandatory Category Rulemaking: Comment  
**Date:** Sunday, December 30, 2018 11:29:26 AM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

M. Delaney Russell  
3124 44th Ave. S.  
Minneapolis, MN 55406

**From:** Nova Bradford  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, December 30, 2018 12:53:45 PM

---

To: Mr. Dahl and Ms. Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Nova J Bradford

2118 Dupont Ave S #2

Minneapolis, MN, 55405

**From:** Steven Smith  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, December 30, 2018 10:37:32 PM

---

To Mr. Dahl:

I write requesting hearings on the Proposed Permanent Rules Relating to Environmental Review to be held in different parts of the state.

I object to 4410.0500 Subp. 6. (RGU Selection Procedures) Keep it the whole board's decision for public transparency and comment.

I object to 4410.4300 Subp. 7. (Mandatory Categories) Oil pipelines shouldn't be in the EAW category but rather in the mandatory EIS category for both application for certificate of need and routing.

I object to 4410.4300 Subp. 4. (Mandatory EAW rules) In an era of rapidly growing global warming refinery expansions of 10,000 barrels a day should be mandatory EIS.

Thank you.

Steven A Smith  
1011 E 37th St.  
Minneapolis MN 55407  
Phone 612-249-2672

**From:** Bonnie Beckel  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Comment on EQB proposed changes to Environmental Review rules  
**Date:** Monday, December 31, 2018 10:24:21 AM

---

Dear Mr Dahl and Ms Wilson,

I request public hearings regarding the following parts of the Proposed Permanent Rules Relating to Environmental Review because I disagree with the following proposed rules:

4410.0500 Subp.6. (RGU Selection Procedures) It is important that the public be able to observe these discussions, comment on proposed changes and observe these votes. To support this public participation, these decisions should be in the hands of the whole board and not be designated to another RGU.

4410.4300 (Mandatory EAW Categories) In this era of climate change, the development of fossil fuel infrastructure should always be in the mandatory EIS category NOT in the EAW category. Gas pipelines should continue to be included in the rules, under either category. And proposed refinery expansions should be moved to the EIS category.

4410.4400 (Mandatory EIS Categories) Again, pipelines should always be in the mandatory EIS category for the application and the certificate of need, as well as the routing permit. The rules should also put any proposed major rebuilds of refineries in the mandatory EIS category.

I question the legality of the proposed changes to 4410.4300 and 4410.4400 because they may not comply with existing laws and rulings.

Sincerely,

Bonnie Beckel

3519 23<sup>rd</sup> Ave. So., Minneapolis, MN 55407

Exhibit I.50.

Houston County Hwy Dept.  
1124 E. Wabington St.  
Caledonia, MN 55921

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd.  
St Paul, MN 55101



U.S. POSTAGE  
ZIP 55921 \$0.00  
02 MN  
0001409625 DE



**HOUSTON COUNTY**  
 1124 East Washington Street  
 Caledonia, MN 55921  
 TEL (507) 725-3925 FAX (507) 725-5417

December 26, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Houston County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Houston County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**



from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Houston County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more, with could result in the loss of funding for the project. **Delaying project delivery by a year results in increased construction, safety,**

**social and economic impacts and costs** that should be factored into the MMB assessment. <sup>Exhibit I.50.</sup> Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review**. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE website,

“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit. The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA). Exhibit L50.

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
  
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter, the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus, the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the

likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

C. Requested Actions

1. **Houston County Department of Transportation requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Houston County Department of Transportation recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public

road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact the Houston County Highway Engineer, Brian Pogodzinski, at (507) 725-3925 or [Brian.Pogodzinski@co.houston.mn.us](mailto:Brian.Pogodzinski@co.houston.mn.us)

Sincerely,



Fred Arnold, Chairperson  
Board of County Commissioners  
Houston County



Marshall County Highway Dept.  
447 So. Main  
Warren, MN 56762

**TO:** Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
Mt. Paul, MN 55155



447 So. Main • Warren, MN 56762  
 Phone: 218-745-4381 • Fax: 218-745-4570

December 17, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided earlier in the process for road authorities and other interested persons to provide input.

- A. Marshall County **supports** the following proposed rule amendments to the EAW highway category that meet the rule update goal of improving environmental review efficiency:
  - Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.
  - Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.
- B. Marshall County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27b should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.



Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an EIS is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Marshall County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association has estimated the proposed revisions would **cost local road authorities in Minnesota an additional \$2,000,000 or more per year** (aggregated statewide). The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction costs due to inflation** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increase in the rule implementation cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and USACE permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a FEMA mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and MPCA 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544).

EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with NEPA.

9. **The proposed changes to subpart 27 item B are recent and, as such, have not been afforded adequate time for discussion.** This change was not included in the 2016 draft of potential rule amendments. In fact, our 2016 comment letter praised EQB for not making changes that would increase the number of projects triggering a mandatory EAW, given that effort must be made already to evaluate alternatives and demonstrate compliance with wetland sequencing requirements of state and federal rule (avoid, minimize, mitigate). Our letter stated:

“In addition, SLC PW supports that EQB is not proposing mandatory category changes that would pull significantly more projects into the environmental review process than existing rules. I believe this is justified, given that **our projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. County highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken.**

In particular I was pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27.”

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

11. Most of the mandatory EAW categories list intentional activities such as expanding an airport, building a new subdivision etc. There are five categories that set thresholds based on the consequences of activities that provide a system to capture unlisted activities with the potential to have significant environmental impacts. Comparing the “consequence-based” categories to see if they have parity in the size or likely complexity of project that they capture and types of exemptions allowed, we conclude that **4410.4300 subp. 27 as revised appears to cast a much wider net than the others, i.e., it would capture smaller, less complex projects.**
- The air pollution category (4410.4300 subp. 15) covers construction or modification of a stationary source that generates 250 tons or more per year of a single air pollutant after installation of air pollution control equipment. This is a very large source compared to most facilities that obtain an air pollution permit. Our understanding is that this likely applies to zero to five facilities per year.
  - **The stream diversion category** (subp. 26) covers diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles. **This category includes an exemption for work in the right-of-way of an existing public roadway associated with bridge or**

culvert replacement (4410.4600, subp. 14) and for routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair (4410.4600, subp. 17). **These exemptions seem equally applicable to 4410.4300, subp. 27.**

- **The historic property category allows exemption for projects reviewed under Section 106 or a list of other types of review. This supports the conclusion that subp. 27 is not necessary because public water and wetland impacts that exceed one acre of impact go through detailed state and/or federal review.**
- Subp. 30 regarding natural areas also applies to a relatively narrow realm of projects with impacts to BWCA, state trails, state parks etc.

C. Requested Actions

1. **Marshall County requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Marshall County recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me Lon Aune, Marshall County Engineer at 218-745-4381 or by email at lon.aune@co.marshall.mn.us.

Sincerely,

A handwritten signature in black ink that reads "Lon P. Aune". The signature is written in a cursive style with a large initial "L" and "A".

Lon Aune  
Marshall County Engineer



Wittson County  
 Highway Department  
 101 2nd Street SW  
 Mallock, MN 56728

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd.  
 St. Paul, Mn. 55101







## Kittson County Highway Department

401 2nd Street S.W.  
 Hallock, MN 56728  
 Phone (218) 843-2686  
 Fax: (218) 843-2488

December 17, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Kittson County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Kittson County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs for Kittson County** as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on**

**units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project.

The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Kittson County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. **Kittson County Public Works recommends that EQB delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*


Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,



Kelly Bengtson, PE

Kittson County Engineer

[kbengtson@co.kittson.mn.us](mailto:kbengtson@co.kittson.mn.us)

218-843-2686



**ui Parle Co. Hwy. Dept.**  
422 5<sup>th</sup> Ave., Suite 301  
Madison, MN 56256

MINNEAPOLIS MN 554



Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

55155-410299



Exhibit I.53.

December 19, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Mr. Cedarleaf Dahl:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Lac qui Parle County Highway Department **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Lac qui Parle County Highway Department **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**

from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):
 

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Lac qui Parle County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose

of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **Lac qui Parle County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. **Lac qui Parle County Highway Department recommends that EQB delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without*

*regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and



- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at 320-598-7252 or [sam.muntean@lqpc.com](mailto:sam.muntean@lqpc.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Muntean", with a long, sweeping horizontal stroke extending to the right.

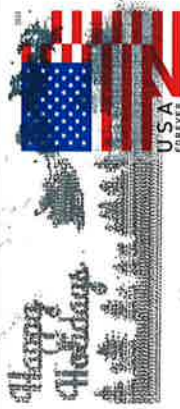
Samuel A. Muntean, PE  
Lac qui Parle County Engineer



**OMEN COUNTY HWY DEPT  
P.O. BOX 399  
AHNOMEN, MN 56557**

FARGO, MD 581

17 DEC 2018 PM 2 7



Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155



PHONE: (218) 935-2296

MAHNOMEN COUNTY ENGINEER  
JONATHAN LARGE, P.E.

FAX: (218) 935-2920

December 17, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Mahnomens County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Mahnomens County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local

laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Mahnomen County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a

comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
  
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit. The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).
  
9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **The Mahnomen County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. The Mahnomen County Highway Department recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at (218) 935-2296 / jon.large@co.mahnomen.mn.us

Sincerely,



Jonathan Large, P.E.  
Mahnomen County Engineer

**From:** Denny Wagner  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, December 31, 2018 11:39:14 AM

---

Dear Mr. Dahl and Ms. Wilson,

I am writing to request public hearings - including in Greater Minnesota, where these changes have the most effect - on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

- 4410.0500 Subp.6. (RGU Selection Procedures): I am concerned that this change will reduce the opportunity for the public to observe and witness the government's regulatory process. I prefer the current rule, which gives RGU Selection authority to the entire EQB, not just the chair.
- 4410.4300 (Mandatory EAW Categories): It concerns me that the EQB is attempting to lessen the regulatory process for pipeline projects (oil or gas) and refineries. I prefer that all pipeline and refinery projects require a mandatory EIS - for both 'need' and 'route' permit applications (in the case of pipelines). The EAW process, which I understand to be a streamlined regulatory process with less scrutiny and burden, should not be an option for projects of this type. The potential impact on the environment is too great to allow for shortcuts here.
- 4410.4400 (Mandatory EIS Categories): I am pleased that the proposed rule change would require a mandatory EIS for new refineries. However, I would also like for mandatory EIS in the case of major refinery rebuilds.

In addition to my concerns on the rule changes themselves, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Denny Wagner  
360 1st St N APT 249  
Minneapolis, MN 55401



**From:** Jacqueline 1  
**To:** [Dahl, Erik \(EQB\)](#)  
**Date:** Monday, December 31, 2018 3:39:05 PM

---

To: Mr Dahl:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Jacqueline Rodkewich

1603 Adams St

Minneapolis MN 55413

**From:** Maurice Spangler  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, January 01, 2019 8:17:18 AM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Maurice Spangler, 15995 Freedom Drive, Park Rapids, MN 56470

**From:** Elaine Moore  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, January 01, 2019 5:51:55 PM  
**Importance:** High

---

Dear Mr. Erik Dahl and Ms. Denise Wilson,

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object the following proposed rules:  
4410.0500 Subp.6( RGU Selection Procedures

4410.4400 (Mandatory EIS Categories)

4410.4300 (Mandatory EAW Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Elaine J. Moore, MA,LP  
314 Clifton Ave Suite 303  
Minneapolis, MN 55403

**From:** Brian PaStarr [mailto:[bpastarr@gmail.com](mailto:bpastarr@gmail.com)]  
**Sent:** Friday, December 28, 2018 3:25 PM  
**To:** [Erik.Dahl@state.mn.us](mailto:Erik.Dahl@state.mn.us)  
**Cc:** [denise.wilson@state.mn.us](mailto:denise.wilson@state.mn.us)  
**Subject:** Mandatory Category Rulemaking: Comment

To: Mr. Dahl and Ms. Wilson,  
I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed rules:  
4410.0500 Subp. 6 )RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Brian C. PaStarr

2201 22nd Ave. S.  
Mpls. Mn.  
55404

**From:** Ron Wetzell  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rule Making: Comment  
**Date:** Tuesday, January 01, 2019 6:50:06 PM

---

This is to request that public hearings be scheduled regarding any proposed changes to the environmental section under which the Environmental Quality Board now operates.

Please let me know if there are any questions about this comment. Thank you.

Sincerely,

Ron Wetzell  
4837 East Upland Crest  
Columbia Heights, MN., 554521

**From:** Stephen Borden  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Tuesday, January 01, 2019 8:25:36 PM

---

To: Mr. Dahl and Ms. Wilson,

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I strongly object to the proposed rules:  
4410.0500 Subp. 6 )RGU Selection Procedures)

4410.4400 (Mandatory EIS Categories)

I also question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Stephen Borden  
6810 37th Avenue North  
Crystal, MN 55427  
612-867-4924

**From:** Bob Merritt  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Date:** Wednesday, January 02, 2019 2:01:10 PM  
**Attachments:** [image.png](#)

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review. Pipelines alone traverse sizable portions of Northern Minnesota. Two hearings close to the metro area are insufficient. Many rural people potentially affected by these rule changes reside substantial distances away from the two proposed hearing sites and have to work to maintain a living. Greater than 95% of rural homes obtain water from wells (groundwater). Pollution of these precious domestic supplies can and have had significant adverse impacts. Yet their voices will be unheard.

I worked for the MN Dept of Natural Resources (DNR) for 32 plus years as an Area Hydrologist. My work area included Becker, Clay, and Mahnomen Counties. I have bachelors degrees in geology and earth science, and a masters degree in hydrology. I understand and am an expert in hydrogeology, the study of the distribution and flow of water within the soil and rocks. During my tenure with DNR, I participated in numerous EAW and EIS preparations and reviews.

My partner and I reviewed Barr Engineering's EIS for Enbridge's proposed Line 3 rerouting. Barr was employed and paid by Enbridge, not the RGU.

My partner has a bachelors degree in geology and a masters degree in geochemistry, and has consulted world wide in chemical contamination and remediation. Using science, my partner and I:

- Refuted much of Barr's contentions regarding groundwater contamination and bacterial plume remediation.
- Cited recent USGS research at sites near Bemidji and Cass Lake, documenting that previously unsampled metabolites from the biologic plume breakdown have migrated significantly down gradient at both Bemidji and Cass Lake sites.. Barr ignored the metabolite research and argued nothing will happen even if a leak occurs. At best their scientific information was out of date. Alternatively, Enbridge's engineer obfuscated and ignored the most recent scientific information.
- Displayed the pitfalls of routing a pipeline through a heavily irrigated outwash plain near Park Rapids.
- Showed that small leaks of 1% or less cannot be identified with current technologies.

Even though our scientific papers were submitted during the EIS review, our criticisms were never addressed by the RGU (PUC) which is against current environmental review rules. It is doubtful our work was even reviewed during the comment period.

Because DNR and MNPCA (PCA) early reviews of Enbridge's consultant's EIS where substantially critical, they were enveloped under the DOC; subsequent DNR and PCA staff comments were ignored. Through a Data Practices Act I was able to document many of these egregious omissions. Both PCA and DNR were captured by PUC and DOC (and by proxy Enbridge). Their concerns and scientific critiques were hidden from the public and ignored.

Opponents to Line 3 were at a major disadvantage because the applicant was allowed to define the project purpose. This resulted in discarding potential alternative options which would not meet the project purpose established by the applicant. This is incongruent with the Minnesota Environmental Policy Act.

It is clear to me that not only should pipeline environmental review be a mandatory EIS, but the RGU

should not be the PUC or DOC. They are ill equipped to handle such massive and technically challenging environmental review proceedings. They are also tainted due to regulatory capture. It is akin to the fox guarding the hen house. If the PUC and DOC remain the primary RGU entities, then neither DNR nor PCA should be enveloped under the PUC/DOC. Their technical expertise and cirques must remain transparent to the public; their analysis must be scientifically based and sound. They should never be muzzled as they were during the Line 3 proceedings.

I object to the proposed following rules:

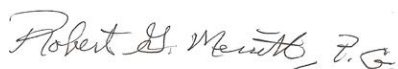
4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

A handwritten signature in cursive script that reads "Robert G. Merritt, P.G.".

Robert G. Merritt, P.G.

1241 Minnesota Ave.

Detroit Lakes, MN 56501



**From:** Doug Fischer  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Revisor's ID Number RD-04157: Proposed Amendment to MN Rules 4410.0200 et. al.  
**Date:** Thursday, January 03, 2019 11:15:48 AM  
**Attachments:** [EQB Comment Letter 01-03-19 Final.pdf](#)

---

Dear Sir,

Attached please find a letter commenting on the above referenced rules amendment and request for a public hearing on the matter. Hard copy of this letter via mail will also be forthcoming.

Thank you.

*Doug*

**Douglas W. Fischer, P.E.**  
**Transportation Division Manager/County Engineer**

Anoka County Transportation Division  
*Highway-Transit-Surveyor-GIS-Fleet*  
1440 Bunker Lake Boulevard NW  
Andover, MN 55304  
[www.anokacounty.us](http://www.anokacounty.us)

Direct Dial: 763-324-3103  
Main Office: 763-324-3100  
Fax: 763-324-3020  
[doug.fischer@co.anoka.mn.us](mailto:doug.fischer@co.anoka.mn.us)

***Our passion is your safe way home!***

NOTICE: Unless restricted by law, email correspondence to and from Anoka County government offices may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.



# Anoka County

## TRANSPORTATION DIVISION

Exhibit I.62.

Respectful, Innovative, Fiscally Responsible

Highway

Transit

Surveyor

GIS

Fleet

January 3, 2019

Mr. Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55101

Re: Revisor's ID Number RD-04157: Proposed Amendment to Rules  
Governing Environmental Review, Minnesota Rules, 4410.0200 et. al.

Dear Sir:

Thank you for this opportunity to provide comment on this rulemaking process. Environmental protection is at the forefront of our organization's goals as is the efficient and effective delivery of services to our constituents. While some of the proposed rule changes allow for these goals to be met through environmental streamlining, there are some provisions that do not.

Anoka County is supportive of the following changes:

- A. M.R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.
- B. M.R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lanes on an existing road for a length of ~~one~~ two or more miles..."

Support for these changes is based on the fact that these changes support the goal of improving environmental review efficiency without sacrificing any environmental benefit. When reflecting on the fact that the primary purpose of conducting an EAW is to determine whether or not a full Environmental Impact Statement (EIS) is necessary, this change is prudent. Due to the linear nature of existing highways that have been in place for many decades, it is a very rare occurrence when a county highway project, regardless of length, has required the completion of an EIS. In my almost 30-year career as a professional engineer in Minnesota, I have never had a single one. Again, this change pertains to "existing" highways where very few, if any, reasonable alternatives are available. Routes on a new location which may have more reasonable alternatives have a lower length threshold and this remains unchanged in these proposed rule changes.

Our Passion Is Your Safe Way Home

1440 Bunker Lake Boulevard N.W. ▲ Andover, MN 55304-4005  
Office: 763-324-3100 ▲ Fax: 763-324-3020 ▲ [www.anokacounty.us/highway](http://www.anokacounty.us/highway)

Affirmative Action / Equal Opportunity Employer

Anoka County opposes the following proposed change:

- C. M.R. 4410.4300, subpart 27, item B: "Wetlands and Public Waters" as currently written.

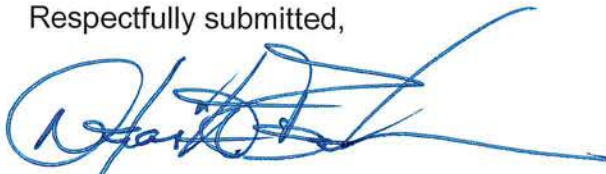
Contrary to the environmental streamlining that occurs in the changes that Anoka County supports, this proposed revision would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment but with negative consequences to project proposers. Impacts to wetlands and public waters is already a highly regulated activity and protected by state and federal laws. Any work in such areas requires the project proposer to avoid, minimize and mitigate such impacts. Permits via the U.S. Army Corps of Engineers, the DNR or local watershed authorities will not be granted without this strict review and coordination. The preparation of an EAW does none of this. So, by dropping the threshold of 5 acres of impact to a combined total of only one acre this will trigger numerous new EAW's. The preparation of unnecessary EAW's will have negative impacts with regards to costs and project delivery timelines. If an assessment of the rules changes was compared to existing required permits, state or local laws and ordinances as part of the process to determine language for the mandatory category modifications, clearly information was missing from this process and this goal is not achieved.

With regards to the proposed rules amendment process itself, the proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016. The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21; and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

In summary, Anoka County Transportation Division requests a public hearing for the proposed amendments to M.R. 4410 as identified in Revisor's ID Number RD-04157. The issue that we intend to address is the proposed change to M.R. 4410.4300, Subpart 27, Item B.

Thank you for your consideration of the concerns and recommendations addressed in this letter. If you have any questions or need additional information, please feel free to let me know.

Respectfully submitted,



Douglas W. Fischer, P.E.  
Division Manager / County Engineer

**From:** Mel Odens  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Cc:** [Mel Odens](#); [Jeremy Pfeifer](#)  
**Subject:** FW: Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 03, 2019 1:56:30 PM  
**Attachments:** [DOC010319.pdf](#)

---

Mel Odens, PE  
Public Works Director  
Kandiyohi County  
K email : mel.odens@kcmn.us  
m phone : 320.235.3266 ext. 4105  
3 cell phone: 320.212.5083  
3 web : www.co.kandiyohi.mn.us  
w mail : 1801 Hwy 12 East  
Willmar, MN 56201

Please consider the environment before printing this e-mail

-----Original Message-----

# ***KANDIYOHI COUNTY PUBLIC WORKS DEPARTMENT***

1801 E Highway 12 • Willmar, MN 56201  
• Phone 320-235-3266 • Fax 320-235-0055 • E-mail: highway@kcmn.us

*Melvin W. Odens, P.E., Public Works Director*

January 3, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Kandiyohi County supports the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Kandiyohi County strongly opposes the proposed changes to 4410.4300, subpart 27, item B "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal.



Supporting information:

1. The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:
  - a. The types of wetlands included have been expanded to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts. Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The existing rule allows a threshold area of impact up to five acres depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, this clause eliminates relatively few of our county highway projects that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
  
2. The proposed revisions to subpart 27 item B would result in new costs for Kandiyohi County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would cost Minnesota counties at least an additional \$2,000,000 or more per year (aggregated statewide) for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.

Per Minn. R. 14.131 the agency must consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of **local**

government. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.

3. In addition to the expense of preparing an EAW for additional projects, one of our biggest concerns is the negative impact this category as revised would have on project delivery timelines, likely leading to project implementation delays of 12 months or more. Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

The time required to complete the EAW process may also increase for all projects conducting environmental review under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

4. Preparing an EAW for projects that do not require review based on any other category (i.e. they only trigger an EAW due to impacts to public waters or wetlands) does not increase environmental protection because it duplicates environmental review efforts already required by state and federal regulations governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
5. Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW. For the stream crossing projects that make up the majority of our projects impacting wetlands, there are typically few realistic alternatives to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600,

subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

6. Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis." USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

7. The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016. The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
8. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR "an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference." The SONAR addresses this requirement on page 69 (included below).

"It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides



for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

C. Requested Actions

1. Kandiyohi County Public Works recommends that EQB delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
2. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27, item B to set the trigger threshold for wetland impacts at 5 acres, which is one of the thresholds set out in the existing rule wording. Our third choice would be to revise the wording to improve its clarity while retaining the existing criteria.
3. Kandiyohi County Public Works requests a public hearing for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at 320.235.3266.

Sincerely,



Melvin Odens, PE  
Public Works Director, Kandiyohi County

**From:** Mike Menzel  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 03, 2019 5:12:35 PM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Michael Menzel, M.D.

5410 York Ave So

Edina, MN 55410

**From:** Kathryn Iverson  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 03, 2019 5:15:05 PM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Kathryn J. Iverson

5410 York Ave So

Edina, MN 55410

**From:** Sarah Harper  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Comment  
**Date:** Thursday, January 03, 2019 5:35:38 PM

---

Mr. Dahl and Ms. Wilson,

I am writing to request public hearings across Minnesota covering the Proposed Permanent Rules relating to Environmental Review.

I object to the proposed following rules:  
4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Sarah Harper

1905 1st Ave S.  
Minneapolis, MN 55403

**From:** Lois Norrgard  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 03, 2019 7:39:43 PM

---

To: Mr Dahl and Ms Wilson,

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Lois Norrgard

10368 Columbus Circle, Bloomington MN 55420

**From:** John Haluska  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 03, 2019 9:09:31 PM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

John Haluska

5660 Arthur St NE

Fridley, MN 55432

612 281 0700 (M)

[john.haluska@gmail.com](mailto:john.haluska@gmail.com)

--

"This email is covered by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521. This email, and any attachments, may contain **confidential, private and/or privileged** material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply mail and delete all copies of this message and any attachments."

**From:** Michelle Thelen  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, January 04, 2019 2:44:54 AM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

**4410.0500 Subp.6. (RGU Selection Procedures):** It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.

**4410.4300 (Mandatory EAW Categories):** Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category.

**4410.4400 (Mandatory EIS Categories):** In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Michelle Thelen

4541 42nd Ave. S., Minneapolis, MN 55406

**From:** Margaret Breen  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, January 04, 2019 12:45:48 PM

---

To: Mr. Dahl and Ms. Wilson

I am writing regarding concerns with the legality of the proposed changes in the rules related to environmental review. As a member of the public, I request public hearings on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:  
4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

Additionally, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with the existing law and court rulings because they conflict the Court of Appeals 2015 ruling on the Sandpiper case.

Thank you,  
Margaret Breen  
1600 Grand Ave.  
St. Paul, MN 55410



**From:** Cynthea  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, January 04, 2019 10:04:26 PM

---

**Subject:** Mandatory Category Rulemaking: Comment

Dear Mr. Erik Dahl:

I am sending this email to you to request hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed rules:

4410.0500, subpart 6. RGU Selection Procedures

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,  
Cynthea Gillespie  
556 Mariner Way  
Woodbury, MN 55129  
[cyntheak@zoho.com](mailto:cyntheak@zoho.com)  
612-212-5212

**From:** Dan La Vigne  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Categories Proposed Rules: comment  
**Date:** Sunday, January 06, 2019 5:10:50 PM

---

To: Mr. Eric Dahl and Ms. Denise Wilson:

I respectfully request public hearings at various venues in our state on the Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories.

Some of the proposed rule changes that I oppose are:

4410.0500	Subp 6	(RGU Selection Procedures)	line 3.18
4410.4300	Subp 7	(Mandatory EAW Categories)	
4410.4400		(Mandatory EIS Categories)	Pipelines should be included for both CON and routing.

I also believe there may be some legal questions regarding the proposed changes to 4410.4300 & 4410.4400 with existing law and compliance with a court ruling.

Sincerely,

Dan. La Vigne  
713 Heather Drive  
Shoreview, MN. 55126

**From:** Kaia Svien  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Comment: Mandatory Category Rulemaking  
**Date:** Sunday, January 06, 2019 5:59:07 PM  
**Attachments:** [Kaia Brand Assest - email signature.png](#)

---

Dear Mr Dahl and Ms Wilson,  
Greetings!

I am requesting Public Hearings around the state at multiple locations on the Proposed Permanent Rules Relating to Environmental Review.

I am concerned about the following proposed rules enough to strongly object to them. I want other citizens to hear about my concerns at Public Hearings.  
Here are the rules that worry me:

4410.0500 Subp. 6 )RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

Sincerely,

Kaia Svien, MS  
3632 13th Ave S  
Minneapolis, Mn, 55407

Kaia Svien, MS  
Spiritual Guide, Meditation Instructor, Program Designer  
Mindfulness for Changing Times  
[www.mindfulnessforchangingtimes.com](http://www.mindfulnessforchangingtimes.com)  
ksvien@iphouse.com  
612-722-2650



**From:** Anna Kleven  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, January 06, 2019 7:01:02 PM

---

To Mr. Dahl and Ms. Wilson

I am writing with concerns of the legality of the proposed changes in the proposed rule changes related to environmental review. As a member of the public, I request public hearings on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:  
4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

Additionally, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with the existing law and court rulings.

Thank you,

Anna Kleven

4437 47th Avenue South

Minneapolis, MN 55406

**From:** Sophie Breen  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, January 06, 2019 8:16:29 PM

---

To Mr. Dahl and Ms. Wilson

I am writing with concerns of the legality of the proposed changes in the proposed rule changes related to environmental review. As a member of the public, I request public hearings on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:  
4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

Additionally, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with the existing law and court rulings.

Thank you,  
Sophie Breen  
2924 15th Ave. S.  
Minneapolis, MN 55407

**From:** Luke B.  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, January 06, 2019 8:17:04 PM

---

**To Mr. Dahl and Ms. Wilson**

**I am writing with concerns of the legality of the proposed changes in the proposed rule changes related to environmental review. As a member of the public, I request public hearings on the Proposed Permanent Rules Relating to Environmental Review.**

**I object to the proposed following rules:  
4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)**

**Additionally, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with the existing law and court rulings.**

**Thank You,  
Luke Breen  
5136 Zenith Ave S  
Minneapolis, MN 55410**

**--**

**612-356-1388**

**From:** Green, Jennifer  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Cc:** [Femrite, Justin](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, January 07, 2019 9:52:26 AM  
**Attachments:** [EQB Response 1-7-2019.pdf](#)

---

Please see attached letter from Justin Femrite regarding proposed amendment to Rules Governing Environmental Review.

Thank you,

**Jennifer Green**

**City of Elk River – Sr. Administrative Assistant**

13065 Orono Parkway, Elk River, MN 55330

763.635.1032 [ElkRiverMN.gov](http://ElkRiverMN.gov)



January 7, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl:

Thank you for the opportunity to review the proposed amendment listed above. The City of Elk River is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated flood plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local government governmental unit shall be~~ is the RGU.

The City of Elk River strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

13065 Orono Parkway  
 Elk River, MN 55330 Phone:  
 763.635.1000





Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Femrite', written in a cursive style.

Justin Femrite, P.E.  
Public Works Director/Chief Engineer

**From:** Mary Breen  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, January 07, 2019 12:35:19 PM

---

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)  
4410.4300 (Mandatory EAW Categories)  
4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Sincerely,

Mary Breen  
5136 Zenith Ave. S  
Minneapolis, MN 55410

**From:** rh smith  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Rulemaking  
**Date:** Monday, January 07, 2019 3:56:34 PM  
**Attachments:** [FOH-ELPC Comments EQB rule change.pdf](#)  
[FOH-EQB Rulemaking.pdf](#)

---

Mr. Dahl and Ms. Wilson,

Regarding the Proposed Permanent Rules Relating to Environmental Review:

Please see the attached.

Sincerely,  
Richard

--

*Richard Smith*  
*President, Friends of the Headwaters (FOH)*  
*612-708-0908 C*

<https://www.friendsoftheheadwaters.org>  
<https://www.facebook.com/savemississippiheadwaters>

*P.O.Box 583, Park Rapids, MN 56470*



## ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

December 19, 2018

Denise Wilson and Erik Dahl  
 Environmental Quality Board  
 Attn: Mandatory Category Rulemaking  
 520 Lafayette Road North  
 St. Paul, MN 55155

Thank you for the opportunity to comment on the Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories, Revisor ID: R-4157, published in the *State Register* on November 13, 2018, 43 SR 531, and in the *EQB Monitor* on November 19, 2018.

The focus of our comment is the proposed revision of the pipeline provision in the mandatory EAW section of the environmental review rules, Minn. R. 4410.4300, subp. 7, and the parallel provision in the mandatory EIS section, Minn. R. 4410.4400, subp. 24. The proposed new rule would delete the current section and replace it with the following:

For construction, as defined in Minnesota Statutes, section 216G.01, subd. 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision 3 or 216G.02, subdivision 1, the PUC [Public Utilities Commission] is the RGU [responsible government unit]. Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.

The mandatory EIS rule for pipelines, Minn. R. 4410.4400, subp. 24, would remain the same: “For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, chapter 216G.02, the Public Utilities Commission is the RGU.”

The SONAR claims that the sole purpose of this change is to reconcile the language in Minn. R. 4410.4300, subp. 7 with amendments to the PUC pipeline routing statute, Minn. Stat. §§ 216G.01 - .02, that came later. The current section 216B.02, subd. 1, defines a “pipeline” requiring full route selection procedures as:

pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport hazardous liquids by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility;<sup>1</sup> or

pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.

Minn. Stat. § 216G.01, subd. 3, in turn, has its own definition of “pipeline.” Under that subdivision:

“Pipeline” means a pipeline located in this state which is used to transport natural or synthetic gas at a pressure of more than 90 pounds per square inch, or to transport crude petroleum or petroleum fuels or their derivatives, coal, anhydrous ammonia or any mineral slurry to a distribution center or storage facility which is located within or outside of this state.<sup>2</sup>

The intent, then, of the proposed rule revision appears to be to require mandatory EISs for larger pipelines, and mandatory EAWs for the smaller ones, and to use the thresholds in section 216G.01 and 216.02 to make that determination. That makes sense, and Friends of the Headwaters (“FOH”) could support that change.

Unfortunately, that is not all the proposed rule revision does.

First, in the proposed new Minn. R. 4410.4300, subp. 7, there is a completely new sentence: “Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.” That new sentence was not in the preliminary draft rules, it is not mentioned in the SONAR, and its rationale is not explained anywhere in the documents EQB has made public. Our understanding is that this language was inserted after a meeting EQB staff had with staff at the PUC, the DNR, and the MPCA in August 2018.

Our concern is that this additional sentence might create a new argument for reversing, the decision of the Minnesota Court of Appeals in *In re North Dakota Pipeline Co.*, 869 N.W.2d 693 (Minn. Ct. App. 2015), and sanctioning, by rule, the PUC’s old “comprehensive environmental assessment” alternative to normal environmental review for pipeline projects.

For many years, the PUC avoided the standard environmental review process spelled out in Minn. Stat. § 116D.04 and EQB rules when it considered pipeline projects. Instead, under an authorization from the EQB under Minn. Stat. § 116D.04, subd. 4a,<sup>3</sup> and Minn. R. 4410.3600, the PUC had been accepting “comprehensive environmental assessments” prepared by *applicants* under Minn. R. 7852.1500 as part of the route permit process as adequate substitutes for full environmental review.<sup>4</sup>

---

<sup>1</sup> Under federal regulations, “hazardous liquids” include crude oil, refined petroleum products, highly volatile liquids such as propane, butane, ethylene, or condensates, supercritical carbon dioxide or anhydrous ammonia. 49 C.F.R. § 195.2.

<sup>2</sup> That definition also exempts pipelines owned or operated by a natural gas public utility as defined in section 216B.02, subdivision 4.

<sup>3</sup> Subdivision 4a authorizes the EQB to “identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement.”

<sup>4</sup> That authorization is and always has been a mistake, and the EQB should formally withdraw it, but that is not what FOH is requesting here. FOH is urging the EQB to maintain the status quo.

In proceedings over the proposed Sandpiper pipeline a few years ago, the PUC departed from its usual course and divided its certificate of need (“CN”) and route permit (“RP”) proceedings. The PUC then proceeded to determine whether the pipeline project met the requirements for a certificate of need without any prior environmental review or environmental assessment at all.

The Court of Appeals held unanimously that that PUC decision violated the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.04. The court found that no pipeline certificate of need could be granted unless preceded by a MEPA-compliant environmental review. 869 N.W.2d at 697-98.

The PUC and its staff disagreed strongly with that decision, and they filed a petition for review with the Minnesota Supreme Court, which was denied. Since then, the PUC did order a full EIS for the Line 3 pipeline project, to apply to both its certificate of need and route permit decision processes. FOH and other parties are not satisfied with the resulting EIS, and the adequacy of the EIS is now pending before the Court of Appeals. But the PUC decision to use the regular MEPA environmental review process, and not the old CEA process, was a good decision. Certainly, however, the preference of PUC and its staff would be to have the option in all cases to return to the applicant-prepared “comprehensive environmental assessments” under chapter 7852 and Minnesota Statutes chapter 216G. By adding rule language that says environmental review of pipelines “must be conducted,” not under MEPA, but “according to chapter 7852 and Minnesota Statutes, chapter 216G,” the PUC and pipeline applicants get another argument that the full EIS process can be avoided.

FOH, of course, does not concede that this language would actually have that effect. A full EIS process can comply with *both* MEPA *and* the PUC’s statute and rules, and we believe that would be an appropriate way to harmonize potentially conflicting provisions. Nevertheless, it is difficult to discern any rationale for this extra sentence other than to preserve the option to avoid the usual MEPA requirements for environmental review. Certainly, the SONAR provides no alternative rationale.

This is not a theoretical issue, because, if the new Line 3 pipeline corridor is ultimately approved, there will likely be more pipeline applications coming. Enbridge has a problem with several of its pipelines on easements across the Leech Lake reservation that are due to expire and will not likely be renewed.

FOH is not arguing that EQB’s rules for alternative review processes be changed in this rulemaking process, or that any previous authorizations be overturned by rule. The question of whether applicant-prepared CEA’s under Minnesota Rules, chapter 7852, are adequate alternatives to full EISs in pipeline cases should be decided on the facts by the EQB, not by trying to slip in rule language through a technical amendments package.

The second issue has to do with the mandatory EIS category for pipelines. The new mandatory EAW category uses the phrase “[f]or construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2,” but the old mandatory EIS category will still use “[f]or

routing.” That potentially limits the scope of a pipeline EIS to issues not covered by a certificate of need, which is confusing and inconsistent with the *North Dakota Pipeline Co.* ruling.

FOH therefore recommends that the last sentence in the proposed new subpart 7 of Minn. R. 4410.4300 be deleted. FOH further recommends that EQB replace the word “routing” in the current Minn. R. 4410.4400, with the word “construction” or with the phrase “construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2.” That will better effectuate EQB’s intent to clarify the mandatory categories and better reconcile them with existing law, and to avoid substantive disputes like the ones outlined in this comment.

If you have questions or concerns, please contact me at your convenience.

Sincerely,

---

SCOTT R. STRAND  
Environmental Law & Policy Center  
60 S. 6<sup>th</sup> St., Suite 2800  
Minneapolis, MN 55402  
612-386-6409  
[sstrand@elpc.org](mailto:sstrand@elpc.org)

ATTORNEY FOR FRIENDS OF THE  
HEADWATERS

Dated: December 19, 2018



January 7, 2019

Denise Wilson and Erik Dahl  
Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155

Dear Ms. Wilson and Mr. Dahl,

Re Mandatory Category Rulemaking: Comment

Please find attached comments from Mr. Scott Strand, Environmental Law and Policy Center, and attorney for Friends of the Headwaters regarding the Proposed Permanent Rules Relating to Environmental Review.

Besides submitting these comments the members of Friends of the Headwaters are also requesting public hearings on this matter in other parts of the state, particularly northern Minnesota locations, beside St. Paul and St. Cloud.

Thank you for your consideration and attention to this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard Smith".

Richard Smith  
President

Enc: Comments

***"There are places where a barrel of water is worth more than a barrel of oil."***

*Friends of the Headwaters*  
P.O. Box 583  
Park Rapids, MN 56470  
[www.friendsoftheheadwaters.org](http://www.friendsoftheheadwaters.org)  
[www.facebook.com/savemississippiheadwaters](https://www.facebook.com/savemississippiheadwaters)



**From:** Maria Klein  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, January 07, 2019 4:11:00 PM

---

Dear Mr. Dahl and Ms. Wilson:

I am writing to request that public hearings be held in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I object to the proposed changes for the following environmental review rules for pipelines, silica sand, mining, recreation trails, etc.:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 as regards their compliance with existing law and court ruling.

Yours truly,

Maria Klein  
5627 Green Circle Drive  
Minnetonka, MN

**From:** ecdvorak@comcast.net  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, January 07, 2019 4:27:43 PM

RE: Proposed Permanent Rules Relating to Environmental Review.

Dear Ms. Wilson and Mr. Dahl,

This email is to advise you that I OPPOSE the Environmental Quality Board’s (EQB) proposed changes to the environmental review section of their rules and respectfully request public hearing regarding these proposed changes.

Specifically, I oppose the following proposed rule changes:

RULE	Comments
RGU Selection: 4410.0500	The EQB Chair should NOT be able to make a sole decision regarding the Responsible governmental unit (RGU). Review should continue to be reviewed by the full Board, allowing public observation and comments with the ability to see the final vote
EAW Inclusion 4410.4300 Subpart 7	The change in this section for oil pipelines from routing to construction in the Environmental Assessment Worksheet (EAW) should not be made, and gas pipelines should not be removed. Further, oil pipelines should not be in the EAW category but continue to be in the mandatory Environmental Impact Statement (EIS) category for both Cert of Need and routing applications.
EIS Rule 4410.4400 Subpart 24	This proposed rule may not be legal; it goes against MEPA law and the MN Court of Appeals Ruling. It should be rejected.
Refineries 4410.4300 Subpart 4	As we face rapid climate change, we must require that refinery expansion applications also are required to be in the EIS category.
EIS Rule 4410.4400 Subpart 4	Given the explosion in Superior this autumn, any major refinery rebuilds MUST be required to provide EIS and therefore should fall in the mandatory EIS category. The current language requires and EIS only for new construction.

*Best regards,*  
 Eleanor Dvorak  
 5708 Scenic Drive  
 Minnetonka MN 55345

***Invest in our Children’s future – Invest in Renewable Energy.***

**From:** John Anderson  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Caleb Peterson](#)  
**Subject:** Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600  
**Date:** Tuesday, January 08, 2019 9:08:20 AM  
**Attachments:** [image001.png](#)  
[EQB letter.pdf](#)

---

Attached please find comments from our Public Works Director related to:

**Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*,  
4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926,  
4410.4600**

Original to follow in US Mail

Thank you

**John Anderson**  
**City of Cloquet – Engineering Dept**  
**1307 Cloquet Avenue**  
**Cloquet, MN 55720**  
<http://www.CloquetMN.gov>  
**(218) 879-6758**





## DEPARTMENT OF PUBLIC WORKS

1307 Cloquet Avenue; Cloquet, MN 55720  
 Phone: (218) 879-6758 Fax: (218) 879-6555  
 Street – Water – Sewer - Engineering  
[www.ci.cloquet.mn.us](http://www.ci.cloquet.mn.us)

January 4, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Cloquet is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**


B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated  ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

The City of Cloquet strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Peterson', with a long horizontal flourish extending to the right.

Caleb Peterson, PE  
Public Works Director  
City of Cloquet

**From:** John Brunkhorst  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Cc:** [Cindy Ford](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Wednesday, January 09, 2019 10:34:10 AM  
**Attachments:** [010919\\_McLeod County EOB Proposed Rules Comments.pdf](#)

---

Hello, please see attached comments regarding changes you are proposing.

Thank you for consideration.

John

**John T. Brunkhorst, PE**  
**County Engineer/Public Works Director**  
**McLeod County Public Works**  
**1400 Adams Street SE**  
**Hutchinson, MN 55350**

**Tel: (320) 484-4321**

**Fax: (320) 234-6971**

Visit our [Highway Department Website](#).

Find us on [Facebook](#) & [Twitter](#)



## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

January 9, 2019

*Sent Via e-mail*

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik,

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. McLeod County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of one two or more miles." This is a prudent change from the current rule.

- B. McLeod County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

*Highway · Parks · Fairgrounds · GIS*

Equal Opportunity/Affirmative Action Employer





## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**





## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].

4. **The proposed revisions to subpart 27 item B would result in new costs** for McLeod County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.



## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

The time required to complete the EAW process may also increase for all projects conducting environmental review under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**" USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.



## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.



# McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

## C. Requested Actions

1. **McLeod County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. McLeod County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other



## McLEOD COUNTY PUBLIC WORKS

1400 Adams Street SE, Hutchinson, MN 55350

(320) 484-4321 • Fax (320) 234-6971

projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,

John Brunkhorst, PE  
McLeod County Engineer/Public Works Director

Cc: Cindy Ford, County Administrator



January 2, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd.  
St. Paul, MN, 55155

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Minnesota Inter-County Association (MICA) **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. MICA **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. The affected projects are already permitted under the Wetlands Conservation Act and thus any adverse environmental impact must be mitigated. Further, this proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**

- a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects. In our experience the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27**

from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):
 

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories' rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Minnesota townships, cities, and counties. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.



5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety

improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.
- The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).
9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and

treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus, the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

1. **MICA requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. MICA recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without*

*regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and

- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me.

Sincerely,



Keith Carlson,  
Executive Director  
Minnesota Inter-County Association  
(o) 651-222-8737  
(c) 612-759-9442  
[keithc@mica.org](mailto:keithc@mica.org)

**Aitkin County Environmental Services Planning and Zoning**  
**209 Second Street NW**  
**Room 100**  
**Aitkin, MN 56431**  
 Phone: 218-927-7342  
 Fax: 218-927-4372



December 27, 2018

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd  
 St. Paul, MN 55101

Mr. Dahl:

The purpose of this letter is to comment on the proposed amendments to the Rules Governing Environmental Review. Aitkin County realizes the need to periodically review the Rules and make updates when necessary, however, we do oppose the amendments proposed in 4410.4300, Subp.27, B. As currently written in rule, any project that changes or diminishes the course, current or cross section of 40% or more or 5 acres or more of type 3 through 8 wetland of 2.5 acres or more ... must complete an EAW. As proposed in the amendments, the amount of wetland impact is being reduced from 5 acres to 1 acre, and the types of wetland are now increased from type 3 through 8 to type 1 through 8. This will have a significant impact on the time and cost in our road projects and other large scale projects. Even accessing suitable building sites for residential properties will now require an EAW. Through the Wetland Conservation Act (WCA), all of these wetland activities are reviewed and must follow an approved process. We believe that this proposed language, with added and duplicative wetland scrutiny, is unnecessary.

Aitkin County has a land area of 1.17 million acres and approximately 725,000 acres are wetlands. Dropping the threshold from 5 acres of impact to 1 acre, and expanding the types of wetland to include types 1 and 2 is not practical for Aitkin County, or many other counties with a large portion of their land area still remaining in wetlands.

Aitkin County strongly encourages deleting the proposed amendments to this subpart. If the language remains we suggest allowing counties with greater than 80% of their pre-settlement wetlands to use the existing rule standards.

Aitkin County feels it is important that if the proposed language remains as it is currently written, then Aitkin County formally requests that the rule changes go through the public hearing process.

Aitkin County appreciates your consideration of these concerns and hope that the EQB will be receptive to the request to keep 4410.4300, Subp.27, B as it is currently written in rule.

Sincerely,

Terry Neff  
 Environmental Services Director

Steve Hughes  
 Aitkin County SWCD Manager

cc: County Board of Commissioners  
 c:leqbcomments

January 4, 2019

Denise Wilson and Erik Dahl  
 Environmental Quality Board  
 Attn: Mandatory Category Rulemaking  
 520 Lafayette Road North  
 St. Paul, MN 55155

Thank you for the opportunity to comment on the Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories, Revisor ID: R-4157, published in the State Register on November 13, 2018, 43 SR 531, and in the EQB Monitor on November 19, 2018.

The focus of my comment is the proposed revision of the pipeline provision in the mandatory EAW section of the environmental review rules, Minn. R. 4410.4300, subp. 7, and the parallel provision in the mandatory EIS section, Minn. R. 4410.4400, subp. 24. **In addition, I call for a public hearing on these revisions because of their importance.**

The proposed new rule would delete the current section and replace it with the following which I have put in quotes:

“For construction, as defined in Minnesota Statutes, section 216G.01, subd. 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision 3 or 216G.02, subdivision 1, the PUC [Public Utilities Commission] is the RGU [responsible government unit]. Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.”

I note that the mandatory EIS rule for pipelines, Minn. R. 4410.4400, subp. 24 would remain the same.

The SONAR states that *the sole purpose* of this change is to reconcile the language in Minn. R. 4410.4300, subp. 7 with amendments to the PUC pipeline routing statute (Minn. Stat. §§ 216G.01 - .02) that came later than the rule.

Unfortunately, that is not all the proposed rule revision does, and therefore it would appear that the statement of “sole purpose” is incorrect.

There is a completely new sentence in the proposed new Minn. R. 4410.4300, subp. 7: “Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.” That new sentence is not mentioned in the SONAR, and its rationale is not explained anywhere in the documents EQB has made public.

This new sentence could provide a means of reversing the decision of the Minnesota Court of Appeals in the highly important case ordering an EIS on the two Enbridge pipelines (North Dakota Pipeline Co., 869 N.W.2d 693 (Minn. Ct. App. 2015.)) It could therefore possibly support the use of the PUC’s terribly flawed “comprehensive environmental assessment” alternative to normal environmental review for pipeline projects.

For years, the PUC has avoided the standard environmental review process spelled out in Minnesota statute and EQB rules when it considered pipeline projects. Instead, the PUC had been accepting supposed “comprehensive environmental assessments” prepared by applicants as adequate substitutes

for full environmental review. This was done as part of the route permit process and completely failed to comply with MEPA regarding alternatives, public participation, and scientifically sound reviews.

A simple comparison of the EIS review of Enbridge's proposed Line 3 project and the past PUC review of Enbridge's Alberta Clipper project completely exposed the fallacies of the applicant-prepared—and supposed—"comprehensive environmental assessment."

By adding rule language that says environmental review of pipelines "must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G," the PUC and pipeline applicants likely will try again to avoid the full EIS process. That avoidance has in the past abysmally failed to provide Minnesota agency decision makers the ability to make adequate permit decisions on multi-billion dollar projects that can severely threaten Minnesota's environment. Finally, the past pipeline reviews completely failed to allow proper public involvement in these key decisions.

This is an extremely important issue, since, for example, other Enbridge pipelines in its mainline corridor are even older than Line 3, and tribal permissions are expiring. This means that other pipeline projects are likely imminent.

I strongly recommend that the last sentence in the proposed new subpart 7 of Minn. R. 4410.4300 be deleted. And, again, there should be a public hearing regarding these proposals.

Sincerely,



Paul Stolen

37603 370<sup>th</sup> Av SE

Fosston, MN 56542

218-435-1138





## HIGHWAY DEPARTMENT

820 OLD HIGHWAY 75 S.  
CROOKSTON, MN 56716

December 31, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Polk County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Polk County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):  

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Polk County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on**

**units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project.

The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Polk County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Polk County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me Rich Sanders, Polk County Engineer, at 218-281-3952.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Sanders". The signature is fluid and cursive, with the first name "Richard" being more prominent than the last name "Sanders".

Richard Sanders, PE  
Polk County Engineer





**Public Works Department**  
635 2<sup>nd</sup> Street SE  
Milaca, MN 56353  
(320) 983-8201

**Bruce D. Cochran, PE**  
County Engineer

**Reed Pederson**  
Construction Services Manager

**Kevin Schultz**  
Maintenance Superintendent

January 2, 2019

Erik Cedarleaf Dahl  
Planning Director - Rulemaking  
Environmental Quality Board  
520 Lafayette Rd.  
St. Paul, MN, 55101

Subject: Revisor’s ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

A. Mille Lacs County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required “For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles.” This is a prudent change from the current rule.

B. Mille Lacs County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** “Wetlands and Public Waters” as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead to

conclusion that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** Experience has shown **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose

of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. No projects in Mille Lacs County have triggered preparation of an EAW under subpart 27 in the last 10 years went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Mille Lacs County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by the EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, Mille Lacs County believes the proposed rule change will result in no environmental benefit. **As such it is expected a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. Statute 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, it is believed that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **the biggest concern is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment, subpart 27 adds to the uncertainty of the project delivery and complicates projects with multiple funding services. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and

upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. Rule 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a Regional General Permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for Minnesota and Wisconsin. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. Additional information can be provided at the hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Mille Lacs County Public Works requests a public hearing** for the proposed amendments to Minn. Rule 4410.4300 as called for in the November 13, 2018 public notice. At a hearing the County would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing the County can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Mille Lacs County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) and Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which the County find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in sub items i through iv are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me, Bruce Cochran at [bruce.cochran@co.mille-lacs.mn.us](mailto:bruce.cochran@co.mille-lacs.mn.us) or (320) 983-8264.

Sincerely,



Bruce D. Cochran, PE  
Mille Lacs County Engineer



**From:** Rita Chamblin  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 10, 2019 11:21:29 AM

---

Mr. Dahl and Ms. Wilson-

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review. I live in Bemidji, and the two proposed hearings scheduled are insufficient to give myself and my neighbors the opportunity to engage in this process. It's a two and a half hour drive to St. Cloud for me and my neighbors and similar for other communities in this part of the state. Additional hearings should be at locations more accessible to citizens in Northern Minnesota. Locations such as Bemidji, Park Rapids and Duluth should be considered. At least two additional or alternative hearing locations and dates are needed.

I object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

-Rita Chamblin

9025 Kinn Dr. NE

Bemidji, MN 56601

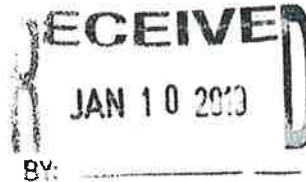


City of  
**St. Michael**

11800 Town Center Drive NE, Suite 300 • St. Michael, MN 55376 • (763) 497-2041 • Fax (763) 497-5306 • www.ci.st-michael.mn.us

January 4, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155



Re: Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

Dear Mr. Cedarleaf Dahl:

Thank you for the opportunity to review the proposed amendment listed above. The City of St. Michael is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

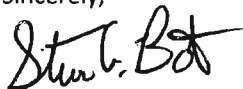
- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit shall be is the RGU.

The City of St. Michael strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,



Steven G. Bot, City Administrator  
City of St. Michael

**From:** John Munter  
**To:** [Dahl, Erik \(EQB\)](#); [John Munter](#)  
**Subject:** RE: Environmental Rule Changes  
**Date:** Friday, January 11, 2019 8:50:42 AM

---

Dear Mr. Dahl,

In regard to the Minnesota Environmental Quality Board's Amended Dual Notice of Intent (attached) to amend administrative rules governing environmental review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600:

I will make more substantive public comments against this whole process of rule change as well as in particular, however this missive is also to request that the two public hearings be expanded to three and some locations moved farther north should 25 requests come in for public hearings.

I live in Warba Minnesota near Grand Rapids. This is 2 hours and 39 minutes north of the city limits of St Cloud.

I suggest you have one meeting Grand Rapids and one meeting in Western Minnesota. Even Western Minnesota can be a 2 ½ or 3 hour drive for me.

In addition there are folks farther north of me that possibly might want to come as well.

Thank you for considering my request.

Please take note that I object to this whole behind-the-scenes process of rule-making when we just finished with the ERAP committee process where these things should have been discussed. I intend to attend whatever public hearing is finally decided upon wherever it is if one is.

Sincerely, John Munter  
14860 Bruce Creek Rd,  
Warba, MN 55793  
218-492-4179

**From:** Lowell Schellack  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rule Making  
**Date:** Friday, January 11, 2019 9:55:45 AM

---

Mr. Dahl and Ms Wilson

I am writing to request public hearings in multiple parts of the State on the Proposed Permanent Rules Relating to Environmental Review.

I object to the following rules:

4410.0500 Subp. 6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court rulings.

Very Truly Yours,

Lowell J. Schellack  
P.O. Box 628  
Park Rapids, MN 56470

January 7, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Waseca is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit shall be the RGU.

The City of Waseca strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Kellogg", with a long horizontal flourish extending to the right.

Tom Kellogg  
Waseca City Engineer



## DEPARTMENT OF PUBLIC WORKS

1307 Cloquet Avenue; Cloquet, MN 55720  
 Phone: (218) 879-6758 Fax: (218) 879-6555  
 Street – Water – Sewer - Engineering  
[www.ci.cloquet.mn.us](http://www.ci.cloquet.mn.us)

January 4, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Cloquet is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

The City of Cloquet strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Peterson', with a long horizontal flourish extending to the right.

Caleb Peterson, PE  
Public Works Director  
City of Cloquet





# CITY OF CHANHASSEN

Chanhassen is a Community for Life - Providing for Today and Planning for Tomorrow

January 8, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Chanhassen is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit shall be is the RGU.

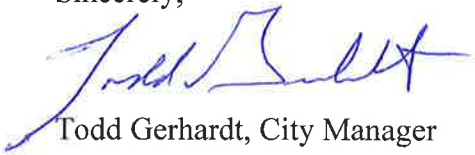
The City of Chanhassen strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of

Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAWs are a necessary and useful tool; a simple project with only wetland impacts is not one of those cases.

Sincerely,



Todd Gerhardt, City Manager  
City of Chanhassen



January 4, 2019

Ms. Denise Wilson  
 Minnesota Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: Mandatory Category Rulemaking: Comment

Dear Ms. Wilson:

On behalf of the City of Minnetrista, WSB is pleased to provide the following comments regarding the Environmental Review Mandatory Categories Rulemaking. WSB is the consulting engineer for the City.

Minnetrista is a City within Hennepin County which contains many lakes and miles of shoreland overlay. Notable public waters include the upper portion of Lake Minnetonka, Whaletail Lake, Ox Yoke Lake, Dutch Lake, and Mud Lake, among several others. Minnetrista is a community that sees development and growth, primarily residential, within the shoreland overlay zones. The City's comments pertain to the proposed changes relating to public waters/wetlands, as described below:

Rule Citation

4410.4300 – Subp. 27 Public waters, public waters wetlands, and wetlands B

Subject

An EAW will be required for projects that will cause and impact to a total of 1 acre or more of wetlands within the shoreland overlay, floodplain, scenic rivers district, MN project Riverbend Area, or the Mississippi River headwaters area.

City Comments

1. This proposed rule change is concerning and will not streamline the process.
2. This change will result in RGUs completing more EAWs and there does not seem to be an environmental benefit.
3. The rule change seems redundant in its environmental protection, as wetlands are already subject to regulatory programs review (WCA, USACE Section 404, etc.) which require wetland impacts avoidance and minimization.
4. The City recognizes the need to make this section less confusing. However, we recommend removing this change to the rules as needing an EAW when you impact one acre or more of wetlands is onerous and already covered with WCA rules.
5. The non-wetland related review categories comprising the EAW worksheet seem like a lot of unnecessary effort, just because the 1-acre wetland impact threshold were triggered.
6. The City objects to a 1-acre of wetland impact threshold to trigger a mandatory EAW.

The City of Minnetrista requests a hearing on the matter for these rules and would like to see the proposed language for MR 4410.4300, Subp 27 revised as noted.

Sincerely,

WSB



Alyson Fauske, PE  
Senior Project Manager

cc: David Abel, City of Minnetrista  
Andrea Moffatt, WSB

**From:** Ryan Thilges  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Cc:** [All County Commissioners](#); [Stefan Gantert](#); [Bob Meyer](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Wednesday, January 16, 2019 7:54:56 AM  
**Attachments:** [EQB 2018 rule revision comment letter BEC.pdf](#)

---

Denise & Erik

Please note the attached comment letter from the Blue Earth County Public Works Department regarding proposed EQB rule revisions.

Thank you

Ryan Thilges, P.E.  
Blue Earth County Engineer / Public Works Director  
507-304-4025  
35 Map Drive, P.O. Box 3083  
Mankato, MN 56002-3083

---

This email is intended to be read only by the intended recipient. This email may be legally privileged or protected from disclosure by law. If you are not the intended recipient, any dissemination of this email or any attachments is strictly prohibited, and you should refrain from reading this email or examining any attachments. If you received this email in error, please notify the sender immediately and delete this email and any attachments. Thank you.



# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

January 16, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Blue Earth County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Blue Earth County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:



# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection



# BLUE EARTH COUNTY

Effectively and Efficiently  
Delivering Essential Services

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

- The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

- The proposed revisions to subpart 27 item B would result in new costs** for Blue Earth County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the





# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that **a consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact this category as revised would have on project delivery timelines,** likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$500,000 bridge replacement project for one year are estimated to be \$15,000 to \$25,000 (3 to 5%). Costs associated with delaying a typical \$4,000,000 road reconstruction project for one year are estimated to be \$120,000 to \$200,000 (3 to 5%). The current Blue Earth County 5 Year Capital Improvement Plan identifies 2 road reconstruction projects and 2-4 bridge replacements per year.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category (i.e. they only trigger an EAW due to impacts to public waters or wetlands) does not increase environmental protection because it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the



# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

**Administration**  
TEL: 507-304-4150  
FAX: 507-304-4344

**Extension**  
TEL: 507-304-4325  
FAX: 507-304-4059

**Finance**  
TEL: 507-304-4182  
FAX: 507-304-4077

**Physical Plant**  
TEL: 507-304-4249

**Taxpayer Services**  
PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

**Human Services**  
PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

**Environmental Services**  
PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

**Taxpayer Services/  
License Center**  
PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

**Veterans Services**  
PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

**Information Technology**  
PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

**Sheriff's Office**  
PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

**County Attorney**  
PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

**Probation**  
PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice



# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

(PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public



# BLUE EARTH COUNTY

Effectively and Efficiently  
Delivering Essential Services

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.97.

waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

- Blue Earth County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
- Blue Earth County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
- If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### Subp. 27. Wetlands and public waters.

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399



# BLUE EARTH COUNTY

Effectively and Efficiently  
Delivering Essential Services

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

~~or~~ the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

- For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.
  - i. Impacted wetlands are types 6, 7 or 8; and
  - ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
  - iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399



# BLUE EARTH COUNTY

*Effectively and Efficiently  
Delivering Essential Services*

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at [ryan.thilges@blueearthcountymn.gov](mailto:ryan.thilges@blueearthcountymn.gov) or at (507) 304-4025.

Sincerely,

Ryan Thilges, P.E., County Engineer / Public Works Director  
Blue Earth County Public Works Department  
35 Map Drive, PO Box 3083  
Mankato, MN 56002-3083

Cc: All Blue Earth County Commissioners  
Bob Meyer, Blue Earth County Administrator  
Stefan Gantert, P.E., Assistant County Engineer

h:\word-\r thilges\2019\eqb 2018 rule revision comment letter bec.doc

Exhibit I.97.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

*Pennington County Highway Dept.  
County Engineer's Office*

250 125th Avenue NE  
Thief River Falls, MN 56701

Telephone (218) 683-7017  
Fax (218) 683-7016

January 30, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Pennington County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Pennington County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.



Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Pennington County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on**

**units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project.

The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus, the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Pennington County Highway Department requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Pennington County Highway Department recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

#### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me 218-683-7017 or email at [mflaagan@co.pennington.mn.us](mailto:mflaagan@co.pennington.mn.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Flaagan", followed by a horizontal line.

Michael Flaagan, PE  
Pennington County Engineer

# 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

# 30

PARTICIPANTS

# 1

TOPICS

# 30

ANSWERS

# 0

REPLIES

# 1

VOTES

## SUMMARY OF TOPICS

### SUBMIT A COMMENT

 30 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

---

**Levi Gregg** · Citizen · (Postal Code: unknown) · Jan 09, 2019 7:13 am

 1 Votes

In regard to Section 4410.4300 Subpart 27 B, I am against changing, "the change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more" to, "cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands" because part 8420.0111 only provides protections for wetland types 3 through 5 so this language change would remove protections for wetland types 6 through 8.

I propose the use of the following language, For projects that will cause a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or, or by excavation in the permanently and semipermanently flooded areas of type 3 through 8 wetlands, as defined in subpart 75, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland., to a total of one acre or more of wetlands.

In regard to Section 4410.4300 Subpart 7, I am against the proposed changes because they would increase the efficiency of processing proposed pipeline projects. Creating a faster review process would undermine the quality of the review and make it more difficult to comprehensively analyze the environmental impacts of a pipeline project. Additionally, it would provide less time for concerned citizens to raise objections to the project. I suggest entirely removing this change.

I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Levi Gregg, my address is 11277 Neal Avenue North.

## 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

---

**Linus Langer** · Citizen · (Postal Code: unknown) · Jan 14, 2019 9:12 am

👍 0 Votes

levi, just wondering... do you like this forum/format? are there others as helpful? i'm looking at trello public boards for similar purpose. any opinions? thanks OAH and you too.

---

**Abby Banks** · Citizen · (Postal Code: unknown) · Jan 17, 2019 12:32 pm

👍 0 Votes

Hello. My name is Abby Banks, and I live in Woodbury, MN. I would like to register a request for a public hearing on the rules being changed in section 4410.4300. I have objections to the attempts to streamline the process for oil pipelines and the adverse affects it is likely to have on our environment. Thank you.

---

**Joshua Framke** · Citizen · (Postal Code: unknown) · Jan 23, 2019 10:15 am

👍 0 Votes

My name is Joshua Framke, I request a public hearing on the rules being changed in section 4410.4300, my address is 14620 114th ST CIR N Stillwater MN 55082.

---

**Abigail McBride** · Citizen · (Postal Code: unknown) · Jan 27, 2019 8:34 pm

👍 0 Votes

Hello, my name is Abigail McBride, and I oppose the rules being changed in section 4410.4300. These changes would allow for a more streamlined process to create new pipelines, which would be especially damaging to wetland areas of Minnesota. This type of ecosystems is critical to MN wildlife and makes Minnesota unique, and the damaging of these areas cannot be permitted. In addition, this new proposed process hinders the people's ability to protest in a timely manner, and doesn't permit for enough time to properly research how much damage could be caused by such constructions. I live in Stillwater, Minnesota.

---

**Keriann Cooper** · Citizen · (Postal Code: unknown) · Jan 29, 2019 9:09 am

👍 0 Votes

Hello, I'm Keriann Cooper. I request a public hearing on the rules being changed in section 4410.4300. I live in Minneapolis, MN 55417.

---

**Katie Schroeer** · Citizen · (Postal Code: unknown) · Jan 31, 2019 11:40 am

👍 0 Votes

My name is Katie Schroeer, and I am requesting a public hearing on the rule changes in section 4410.4300. I am opposed to these changes because of the severe potential negative consequences they could have by making it easier to construct new, harmful oil pipelines in Minnesota that threaten the health of our environment and the wellbeing of



## 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

---

our communities. I live at 206 Winona St. in Northfield, MN, 55057.

---

**Priya Dalal-Whelan** · Citizen · (Postal Code: unknown) · Jan 31, 2019 2:50 pm

👍 0 Votes

My name is Priya Dalal-Whelan. I live in Minneapolis at 3605 Pleasant ave s, 55409 and I request a public hearing on rule changes in section 4410.4300

---

**Eva Beeman Trelstad** · Citizen · (Postal Code: unknown) · Jan 31, 2019 7:01 pm

👍 0 Votes

My name is Eva Beeman Trelstad, and I live in St. Paul, MN at 584 Burlington Rd, 55119. I request a public hearing on the rules being changed in section 4410.4300. Oil pipelines are a threat to the earth and to people and we should not make their construction any easier.

---

**Maddy Fernands** · Citizen · (Postal Code: unknown) · Jan 31, 2019 7:53 pm

👍 0 Votes

My name is Maddy Fernands, and I live in Edina, MN at 6905 West Shore Drive, 55435. I request a public hearing on the rules being changed in section 4410.4300. Pipelines and other fossil-fuel infrastructures have horrendous impacts on the environment and communities, and they accelerate the progression of climate change. The Environmental Quality Board should not encourage and quicken the construction of fossil-fuel infrastructure.

---

**Alex Funk** · Citizen · (Postal Code: unknown) · Jan 31, 2019 8:14 pm

👍 0 Votes

My name is Alex Funk, and I live in Albert Lea MN 56007. I request a public hearing on the rules being changed in section 4410.4300.

---

**Lia Harel** · Citizen · (Postal Code: unknown) · Jan 31, 2019 8:26 pm

👍 0 Votes

My name is Lia Harel. I live at 13604 Inverness Rd. Minnetonka 55305. I request a public hearing on the rules being changed in section 4410.4300

---

**Cassie Mox** · Citizen · (Postal Code: unknown) · Jan 31, 2019 8:47 pm

👍 0 Votes

I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Cassie Mox, my address is 1095 Wescott Road, Eagan MN, 55123.

## 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

**Henri Nguyen** · Citizen · (Postal Code: unknown) · Jan 31, 2019 10:08 pm

👍 0 Votes

Hello, my name is Henri Nguyen. I live at 4133 135th St. W. Savage, MN 55378. I request a public hearing in order to address my objections to the changes in section 4410.4300.

**Maya Sprenger-Otto** · Citizen · (Postal Code: unknown) · Feb 01, 2019 4:31 pm

👍 0 Votes

My name is Maya Sprenger-Otto and I live 6115 10th Ave S Minneapolis, MN 55517. I am kindly requesting a public hearing on the rules being changed in section 4410.4300.

**Benjamin Fena** · Citizen · (Postal Code: unknown) · Feb 01, 2019 5:24 pm

👍 0 Votes

Hello, my name is Benjamin Fena. My address is 3515 Norton Road Duluth, MN 55803, and I request a public hearing to address my objections to the changes in the section 4410.4300

**Gabriel Kaplan** · Citizen · (Postal Code: unknown) · Feb 01, 2019 6:02 pm

👍 0 Votes

I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Gabriel Kaplan, my address is 2828 Sunset Blvd, Minneapolis, MN 55416

**Roari-Clyde Soule-Fahey** · Citizen · (Postal Code: unknown) · Feb 01, 2019 6:29 pm

👍 0 Votes

Hey. My name is Roari-Clyde Soule-Fahey, and I live in Minneapolis, MN. I would like to register a request for a public hearing on the rules being changed in section 4410.4300. I have objections to the attempts to streamline the process for oil pipelines and the adverse affects it is likely to have on our environment. Thanks.

**Erika Peterson** · Citizen · (Postal Code: unknown) · Feb 01, 2019 10:46 pm

👍 0 Votes

I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Erika Peterson and my address is 3112 41st Ave S. Minneapolis, MN 55406

**Talia Magnuson** · Citizen · (Postal Code: unknown) · Feb 01, 2019 10:50 pm

👍 0 Votes

My name is Talia Magnuson and I live at 4224 23rd Ave S 55407, Minneapolis MN. I would like to register a request for a public hearing on the rules being changed in section 4410.4300. Oil pipelines are dangerous, not only to humans, but to this earth and all that

## 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

---

live on it. It is time for us to find new solutions, not perpetuate bad and harmful habits. Thanks.

---

**Roselynn Moore** · Citizen · (Postal Code: unknown) · Feb 03, 2019 12:10 pm

👍 0 Votes

My name is Rose Moore, I live at 2247 Benjamin St. NE Minneapolis 55418 and I request a public hearing in order to address my objections to the changes in section 4410.4300.

---

**Olya Wright** · Citizen · (Postal Code: unknown) · Feb 03, 2019 1:33 pm

👍 0 Votes

My name is Olya Wright, I live at 221 County Rd. 44 Grand Marais, MN 55004. I request a public hearing in order to address objections to the changes in section 4410.4300.

---

**Sophia Anderson** · Citizen · (Postal Code: unknown) · Feb 03, 2019 3:22 pm

👍 0 Votes

I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Sophia Anderson and I live in St. Paul, MN.

---

**Anne Funk** · Citizen · (Postal Code: unknown) · Feb 03, 2019 4:01 pm

👍 0 Votes

My name is Anne Funk, I live in Albert Lea MN 56007. I request a public hearing on the rules being changed in section 4410.4300.

---

**Izzy Benson** · Citizen · (Postal Code: unknown) · Feb 03, 2019 8:01 pm

👍 0 Votes

My name is Isadora Benson, my address is 3829 Harriet Ave S and I request a public hearing on rules being changed in section 4410.4300

---

**Isra Hirsi** · Citizen · (Postal Code: unknown) · Feb 03, 2019 8:20 pm

👍 0 Votes

My name is Isra Hirsi, my address is 225 Portland Ave S and I request a public hearing on rules being changed in section 4410.4300.

---

**Sophie Morrill** · Citizen · (Postal Code: unknown) · Feb 03, 2019 9:30 pm

👍 0 Votes

My name is Sophie Morrill and I want to call for a public hearing for the rule changes on section 4410.4300. I live on 3936 Harriet ave s in Minneapolis.

## 35532 Environmental Quality Board Notice of Intent to Adopt Rules

Closed Feb 04, 2019 · Discussion · 30 Participants · 1 Topics · 30 Answers · 0 Replies · 1 Votes

---

**Marit Isaacson** · Citizen · (Postal Code: unknown) · Feb 04, 2019 7:12 am

👍 0 Votes

My name is Marit Isaacson, and I request a public hearing for the changes in section 4410.4300. My address is 2349 Bourne Ave, Saint Paul 55108

---

**Tonio Alarcon-Borges** · Citizen · (Postal Code: unknown) · Feb 04, 2019 12:27 pm

👍 0 Votes

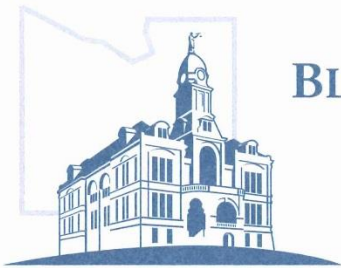
I request a public hearing in order to address my objections to the changes in section 4410.4300. My name is Tonio Alarcon-Borges, my address is 4287 Sun Cliff Rd, Eagan. Oil pipelines create dangers not only to human wellbeing, but also environmental health.

---

**Michael Stalberger** · Citizen · (Postal Code: unknown) · Feb 04, 2019 4:30 pm

👍 0 Votes

Attached are the comments from the Blue Earth County Drainage Authority.



# BLUE EARTH COUNTY

Effectively and Efficiently  
Delivering Essential Services

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

# RECEIVED

By: OAH on 2/4/19 @ 4:30 PM

Michael Stalberger

February 4, 2019

Erik Cedarleaf Dahl  
Denise Wilson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

*Submitted: via email to: Denise.Wilson@state.mn.us and Erik.Dahl@state.mn.us and  
eComment Portal for Office of Administrative Hearings, OAH Docket No. 80-9008-35532*

Re: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200,  
4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

Dear Mr. Dahl and Ms. Wilson,

The Blue Earth County Board of Commissioners, in its capacity as the County's Drainage Authority, wishes to provide comment regarding the above-referenced proposed amendments to Minnesota Rules governing environmental review. The Drainage Authority completes its statutory responsibilities for the public agricultural drainage system through the Taxpayer Services Department and its county drainage staff.

The Drainage Authority is a strong proponent of and advocate for water quality and has directed, participated in, and supported numerous water quality initiatives within the county. It is important to acknowledge that the Authority's comments in this regard are not meant to discourage the overarching goal of enhancing and preserving water quality.

However, the Authority respectfully requests the proposed rules be balanced with current practices and state law as it relates to public agricultural drainage in an effort to prevent duplicative environmental protection practices and ineffective and unnecessary delays to drainage project timelines. For these reasons, **the Blue Earth County Drainage Authority opposes the proposed changes to Minnesota Rules 4410.4300**, as more fully explained below.

1. Minnesota Rules 4410.4300, Subpart 27, Item A. This change proposes to add the DNR as a potential RGU for projects that require an EAW. Current Minnesota Rules provide that the local governmental unit (LGU) is the responsible governmental unit (RGU). Drainage projects may be delayed and incur additional cost if this rule change is adopted and the LGU and the DNR need to confer and determine responsibility for the project. Furthermore, if agreement cannot be reached, then the EQB is involved in a process that will most certainly delay the project.

An alternative to the proposed rule change that is more appropriate in the Drainage Authority's opinion is to clarify that the LGU shall be the RGU unless the LGU requests that

Exhibit I.99.

### Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

### Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

### Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

### Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

### Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

DNR serve as RGU. Without this change, the proposed rule implies that the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process.

2. Minnesota Rules 4410.4300, Subpart 27, Item B. This change proposes to modify the definition of projects that require an EAW (specifically by utilizing the word “impact”). Current Minnesota Rules provide that the project must “...change or diminish the course, current, or cross section...” This proposed change will increase costs to projects and local governmental units such as Drainage Authorities due to the additional staff time and resources needed for initial data/information gathering to determine and quantify impacts (if any). In some cases, partial drainage of wetlands does not result in a measurable change. The additional time needed to prepare an EAW may also risk or delay third party funding and government programs that support the proposed project. Furthermore, Minnesota Statutes (Section 103E.015) already requires the Drainage Authority to consider a list of criteria – including water quality, wetlands, and environmental impact – before establishing projects. This proposed change unnecessarily duplicates environmental consideration in a way that adds cost and time without additional environmental benefit.

An alternative to the proposed rule change that is more appropriate in the Drainage Authority’s opinion is to specifically exclude/exempt county agricultural drainage projects (establishing drainage, improvement, and repair) completed under Minnesota Statutes Chapter 103E from the requirements for an EAW. If the EQB is concerned some Drainage Authorities are not as diligent in their application of this drainage law, another alternative is to amend the proposed rules to specifically require a more formal or written documentation of the considerations of environmental impact required under Minnesota Statutes Section 103E.015.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please contact me as the county’s Director of Taxpayer Services. I can be reached at [michael.stalberger@blueearthcountymn.gov](mailto:michael.stalberger@blueearthcountymn.gov) or at (507) 304-4257, and I will coordinate follow-up information as necessary.

Sincerely,



Michael Stalberger  
Director, Taxpayer Services

cc: All Blue Earth County Commissioners  
Bob Meyer, Blue Earth County Administrator



U. S. Steel Corporation  
 Minnesota Ore Operations  
 P.O. Box 417  
 Mt. Iron, MN 55768

7012 3050 0000 6441 9909

February 4, 2019

Mr. Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Road  
 St. Paul, MN 55101

**Re: Comments to EQB Proposed Amendment to Rules Governing Environmental Review**

Dear Mr. Cedarleaf Dahl,

U. S. Steel operates the Minntac facility in Mountain Iron and the Keetac facility in Keewatin, MN. Minntac and Keetac are iron ore mining facilities in Northeastern Minnesota. Both facilities have undergone environmental review in the past and have active wetland permits. Therefore, the proposed amendments to Minnesota Rules related to environmental review public noticed on November 5, 2018 are of interest. Comments are due by February 4, 2019 and with the postmark on this submittal we have fulfilled the deadline.

U. S. Steel's comments are specific to proposed changes to Minnesota Rule 4410.4430 Subp. 27(B) which are reprinted below as proposed in the Certified Rule Language posted on the EQB's website.

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

U. S. Steel has significant experience with Minnesota wetland programs, and the language as proposed is concerning in that it has the potential for inadvertent triggering of additional, burdensome environmental review requirements. Mining projects are typically measured on the scale of tens to hundreds of acres due to the nature of the progression of mines in the wetlands-rich regions of northern Minnesota where the State's iron ore reserves are located. These projects undergo the rigorous review by the State Wetland Conservation Act program, and where applicable, the overlapping review of the Corps of Engineers as it administers the Federal Clean Water Act 404 program, and the MPCA through the 401 certification program.

While U. S. Steel agrees that clarifying the terms of the types of wetlands for which acres may trigger environmental review is helpful, changing the minimum threshold to only one acre presents overly burdensome requirements without a corresponding environmental benefit. The consequence in this reduction in acreage threshold will be a substantial increase in regulatory burden for projects that would

not otherwise require review. This appears particularly troublesome when neither floodplains nor shorelands are formally defined by rule here and present the potential for confusion in interpretation.

Mining development works on long timelines and relies on a degree of business certainty of regulatory expectations. The proposed change adds undue risk of triggering an EAW under the proposed Subpart 27(B) language and adding an EAW to projects that currently do not require this level of review. This would result in additional time on already lengthy permitting timelines, again without a corresponding environmental benefit as environmental review already occurs by agencies with regulatory authority for wetlands. This also places unnecessary demand on the State resources required to conduct these time and cost-intensive review exercises for limited practical benefit.

U. S. Steel proposes that EQB reconcile these risks by modifying its proposed rules by including an exception to this provision for WCA projects where DNR is the LGU (new text proposed in italics).

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area, a delineated  ~~flood plain~~ floodplain, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit shall be is the RGU. *This provision shall not apply when the DNR is the LGU as described in Minn. Stat. 103G.222, Subd 1(a).*

If EQB rejects the proposal above, then U. S. Steel proposes retaining the 5 acres threshold and clarifying the definitions of shoreland and floodplains (new text proposed in italics and double-strikethrough).

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of ~~one~~ five acres or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area *as identified in an ordinance by an eligible LGU*, a delineated  ~~flood plain~~ floodplain *as identified in an ordinance by an eligible LGU*, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit shall be is the RGU.

If you have any questions related to these comments, please feel free to contact me at (218) 749-7364 or clbartovich@uss.com.

Sincerely,



Chrissy Bartovich  
Director Environmental



**From:** Mike Hofer  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 2:21:21 PM

---

Mike Hofer  
9487 Teakwood Lane N  
Maple Grove, MN 55369

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now

global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Michael J Hofer

**From:** Carlos Espinosa  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Cc:** [John Howard](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 2:56:49 PM  
**Attachments:** [Mandatory Category Rulemaking Winona Comment.pdf](#)

---

Ms. Wilson and Mr. Dahl-

Please see below an attached for a comment on MPCA rulemaking.

Thank you,

-Carlos Espinosa



**COMMUNITY DEVELOPMENT**

207 Lafayette Street  
P.O. Box 378  
Winona, MN 55987-0378  
FAX 507-457-8212

February 4, 2019

Dear EQB Staff,

Thank you for the opportunity to provide input regarding the proposed changes to the state rules governing the environmental review program. The environmental subcommittee of the City of Winona's Planning Commission, as well as staff, reviewed the proposed rule changes.

The City's Planning Commission is concerned by the proposed change to allow the EQB chair to unilaterally determine the responsible governmental unit. On 1/28/2019 the City of Winona Planning Commission passed a motion requesting that the new wording of "or EQB Chair" on line 3.16 of 4410.0500 Subp. 6 be struck so the current system of the EQB board designating the RGU is maintained.

3.16 Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB or EQB chair may  
3.17 designate, ~~within five days of receipt of the completed data portions of the EAW,~~ a different  
3.18 RGU for the project if the EQB determines the designee has greater expertise in analyzing  
3.19 the potential impacts of the project.

Sincerely,

A handwritten signature in black ink that reads "Carlos Espinosa".

Carlos Espinosa  
City Planner

Carlos Espinosa, AICP  
City Planner  
City of Winona  
207 Lafayette Street, P. O. Box 378  
Winona, Minnesota 55987  
Ph. 507-457-8216  
Fax 507-457-8212



## COMMUNITY DEVELOPMENT

207 Lafayette Street  
P.O. Box 378  
Winona, MN 55987-0378  
FAX 507-457-8212

February 4, 2019

Dear EQB Staff,

Thank you for the opportunity to provide input regarding the proposed changes to the state rules governing the environmental review program. The environmental subcommittee of the City of Winona's Planning Commission, as well as staff, reviewed the proposed rule changes.

The City's Planning Commission is concerned by the proposed change to allow the EQB chair to unilaterally determine the responsible governmental unit. On 1/28/2019 the City of Winona Planning Commission passed a motion requesting that the new wording of "or EQB Chair" on line 3.16 of 4410.0500 Subp. 6 be struck so the current system of the EQB board designating the RGU is maintained.

3.16           Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB or EQB chair may  
3.17   designate, ~~within five days of receipt of the completed data portions of the EAW,~~ a different  
3.18   RGU for the project if the EQB determines the designee has greater expertise in analyzing  
3.19   the potential impacts of the project.

Sincerely,

A handwritten signature in blue ink that reads "Carlos Espinosa".

Carlos Espinosa  
City Planner

**From:** Lisa Frenette  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** AGC of MN Comments on Mandatory Categories  
**Date:** Monday, February 04, 2019 3:16:12 PM  
**Attachments:** [Letter to EQB on proposed rules.pdf](#)

---

Erik -

Please find the attached letter from AGC of MN on the above subject.

Thank you.

Lisa

Lisa Frenette  
Frenette Legislative Advisors  
[frenettela@gmail.com](mailto:frenettela@gmail.com)  
[www.frenettelegislativeadvisors.com](http://www.frenettelegislativeadvisors.com)  
651-785-5202



FRENETTE LEGISLATIVE ADVISORS



525 Park Street, Suite #110  
 Saint Paul, MN 55103  
 651.632.8929

February 4, 2019

Will Seuffert  
 Executive Director  
 Environmental Quality Board  
 444 Lafayette Road  
 St. Paul, MN

RE: Proposed Revisions to MN Rules on Mandatory Categories - Chapter 4410

Dear Executive Director Seuffert:

AGC is a non-profit construction industry trade association dedicated to promoting opportunity and excellence in the building and highway construction industries throughout the State of Minnesota. Members include General Contractors, Specialty Contractors, and Affiliated businesses who have a vested interest in these industries. AGC operates as a centralized point of focus for information dissemination, education and training, and for leadership on important construction industry related issues. It also provides leadership to promote and maintain a favorable business climate for its members.

AGC appreciates the opportunity to comment on the proposed revisions to Minnesota Rules Chapters 4410 pertaining to the Environmental Quality Board's (EQB) Mandatory Category rule making. In specific, we are concerned with 4410.4300, subpart 27, item B - "Wetlands and Public Waters." Many of our concerns replicate similar concerns that have been previously posted. Please accept this letter as a placeholder as AGC continues discussions with other entities that are adversely affected by this proposed rule.

AGC opposes the proposed rule for the following reasons:

Proposed Rule 4410.4300, subpart 27, Item B would significantly increase the number of road projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment. Its scope duplicates state (WCA) and federal (EPA) laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Also, the area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts. Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The existing rule allows a threshold area of impact up to five acres depending on the size of the entire affected wetland.

As revised, this proposal does not meet the core purposes of Minnesota's environmental review rules and may detract from their effectiveness for other projects. In our experience, the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives. If over-applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process. The agencies reach out to various associations on how this will impact funding projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Worke". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim Worke  
CEO



**From:** Kathy Hollander  
**To:** [Dahl, Erik \(EOB\)](#)  
**Cc:** [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 3:17:16 PM

---

To: Mr Dahl and Ms Wilson:

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review. St Cloud and St Paul simply are not representative of the full state, and many parts of the state would be affected by these rules.

I am also writing to object to the proposed following rules:

4410.0500 Subp.6. (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court cases, such as MEPA and the Appeals court ruling on the Sandpiper lack of a full EIS.

Sincerely,

**Kathy Hollander**  
3824 Edmund Blvd  
Minneapolis MN

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW:  
**Date:** Monday, February 04, 2019 3:45:26 PM

---

## **Denise Wilson**

Director, Environmental Review Program

### **Minnesota Environmental Quality Board**

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2523

[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

**From:** Dorothy Carlson <doriecarlson@gmail.com>  
**Sent:** Monday, February 4, 2019 8:47 AM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Subject:**

Dorothy Carlson  
1678 Rose Hill Circle  
Lauderdale, MN.

Landowner: Cook County

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review

section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely, Dorothy Carlson

**From:** John Howard III  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 4:21:30 PM  
**Attachments:** [JH Comments to revised EOB rules.docx](#)

---

Erik and Denise,

Please find attached my comments regarding the proposed amendments to the environmental review rules.

An acknowledgement of receipt of this email would be appreciated. Likewise, I would like to know if my comments are incorporated into the rules.

Please let me know if you have any questions about my comments - I'm happy to clarify or elaborate.

Thank you,

John Howard

952-334-6730

After reviewing the proposed changes to the rules, I had the following concerns and comments. The applicable line number in the proposed rules precedes my comments.

1.11: Does "Auxiliary lane" apply to bike lanes on roadways?

3.6: Putting the definition of wetlands based on state code is reasonable.

3.16 to 3.18: Putting the power in the chair to determine the RGU seems to make it easier to have a different RGU. Prefer to remove chair's ability to singularly make the determination on the RGU, or at least have a chance for an RGU to appeal.

4.20-22: State Code Chap.7854 says the PUC permit takes the place of an EAW, but text in the EOB rules seems to indicate an EAW is still needed. Thus unclear.

5.14-5.15: Could be interpreted that even if the projects types meet another EAW threshold, they would be exempt from an EAW. I believe the intent is to say the project types in of themselves are not mandatory EAW categories. I would suggest either deleting 5.14-5.15 or rewriting to something like "The project types described in MN Statutes, section 116D.04, subdivisions 2a, paragraph (b) are not mandatory EAW categories under this subp., but are subject to a mandatory EAW if the project meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared". I support having the project types, if exceeding EAW thresholds, to do an EAW.

7.22-7.25: Seems reasonable to include silica sand projects as a triggering category.

11.12: Replace "25 percent" with "10%" and then drop F on 12.1

14.23-24: Seems it would be better to say that any cumulative combination of impacts to an acre or more of public waters, public waters wetland, or wetlands triggers an EAW. Seems the description in 15.1 to 15.11 has a loophole where a development that impacts part of a public water wetland and then part of a wetland – for instance locating a 1.9 acre project so 0.95 acres is in the public water wetland, and 0.95 acres is in the wetland – could be exempt.

Suggest addition right before "Items A..." : "For projects that will impact one acre or more of any combination of public waters, public waters wetland, or wetlands exceeding, items..."

15.1-4: Unclear when the DNR or local government is the RGU.

15.5-15.7: Smaller threshold is a good addition. 1 acre instead of 2 acres.

15.16: What is "critical area"? Maybe "critical concern area", but not clear.

22.24: No mention of wetland – seems it should include "wetlands"

25.9: Should set a distance threshold for Railroad grade trails requiring EIS. Reads as any conversion of abandoned rail way would need one, even if very small.

**From:** Michael Stalberger  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 4:22:40 PM  
**Attachments:** [Environmental Quality Board Comment Letter.pdf](#)

---

Good Afternoon,

Attached, please find comments regarding the EQB's proposed rules governing environmental review. They will also be uploaded to the OAH eComments site.

Thank you, and please let me know if there are any questions or issues.

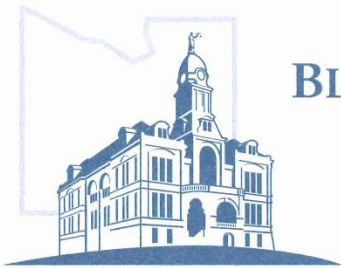
Mike

**MICHAEL STALBERGER | BLUE EARTH COUNTY**

Director of Taxpayer Services  
(desk) 507.304.4257 or 507.382.1280 (cell)

---

This email is intended to be read only by the intended recipient. This email may be legally privileged or protected from disclosure by law. If you are not the intended recipient, any dissemination of this email or any attachments is strictly prohibited, and you should refrain from reading this email or examining any attachments. If you received this email in error, please notify the sender immediately and delete this email and any attachments. Thank you.



# BLUE EARTH COUNTY

Effectively and Efficiently  
Delivering Essential Services

www.blueearthcountymn.gov

## COMMISSIONERS

- District 1 Colleen Landkamer
- District 2 Vance Stuehrenberg
- District 3 Mark Piepho
- District 4 Will Purvis
- District 5 Kip Bruender

Exhibit I.107.

## Historic Courthouse

204 S. Fifth St.  
PO Box 8608  
Mankato, MN 56002

### Administration

TEL: 507-304-4150  
FAX: 507-304-4344

### Extension

TEL: 507-304-4325  
FAX: 507-304-4059

### Finance

TEL: 507-304-4182  
FAX: 507-304-4077

### Physical Plant

TEL: 507-304-4249

### Taxpayer Services

PO Box 3567  
TEL: 507-304-4251  
FAX: 507-304-4075

## Government Center

410 S. Fifth St.  
Mankato, MN 56001

### Human Services

PO Box 3526  
TEL: 507-304-4319  
FAX: 507-304-4379

### Environmental Services

PO Box 3566  
TEL: 507-304-4381  
FAX: 507-304-4431

### Taxpayer Services/ License Center

PO Box 3524  
TEL: 507-304-4340  
FAX: 507-304-4396

### Veterans Services

PO Box 8608  
TEL: 507-304-4246  
FAX: 507-304-4225

### Information Technology

PO Box 8608  
TEL: 507-304-4204  
FAX: 507-304-4355

## Public Works

35 Map Dr.  
PO Box 3083  
Mankato, MN 56002  
TEL: 507-304-4025  
FAX: 507-304-4049

## Justice Center

401 Carver Road  
PO Box 8608  
Mankato, MN 56002

### Sheriff's Office

PO Box 228  
TEL: 507-304-4800  
FAX: 507-304-4818

### County Attorney

PO Box 3129  
TEL: 507-304-4600  
FAX: 507-304-4620

### Probation

PO Box 3543  
TEL: 507-304-4750  
FAX: 507-304-4710

## Library

100 E. Main St.  
Mankato, MN 56001  
TEL: 507-304-4001  
FAX: 507-304-4009

www.beclibrary.org  
TDD: 507-304-4399

February 4, 2019

Erik Cedarleaf Dahl  
Denise Wilson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Submitted: via email to: [Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us) and [Erik.Dahl@state.mn.us](mailto:Erik.Dahl@state.mn.us) and  
eComment Portal for Office of Administrative Hearings, OAH Docket No. 80-9008-35532

Re: Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200,  
4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

Dear Mr. Dahl and Ms. Wilson,

The Blue Earth County Board of Commissioners, in its capacity as the County's Drainage Authority, wishes to provide comment regarding the above-referenced proposed amendments to Minnesota Rules governing environmental review. The Drainage Authority completes its statutory responsibilities for the public agricultural drainage system through the Taxpayer Services Department and its county drainage staff.

The Drainage Authority is a strong proponent of and advocate for water quality and has directed, participated in, and supported numerous water quality initiatives within the county. It is important to acknowledge that the Authority's comments in this regard are not meant to discourage the overarching goal of enhancing and preserving water quality.

However, the Authority respectfully requests the proposed rules be balanced with current practices and state law as it relates to public agricultural drainage in an effort to prevent duplicative environmental protection practices and ineffective and unnecessary delays to drainage project timelines. For these reasons, **the Blue Earth County Drainage Authority opposes the proposed changes to Minnesota Rules 4410.4300**, as more fully explained below.

1. Minnesota Rules 4410.4300, Subpart 27, Item A. This change proposes to add the DNR as a potential RGU for projects that require an EAW. Current Minnesota Rules provide that the local governmental unit (LGU) is the responsible governmental unit (RGU). Drainage projects may be delayed and incur additional cost if this rule change is adopted and the LGU and the DNR need to confer and determine responsibility for the project. Furthermore, if agreement cannot be reached, then the EQB is involved in a process that will most certainly delay the project.

An alternative to the proposed rule change that is more appropriate in the Drainage Authority's opinion is to clarify that the LGU shall be the RGU unless the LGU requests that

DNR serve as RGU. Without this change, the proposed rule implies that the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process.

2. Minnesota Rules 4410.4300, Subpart 27, Item B. This change proposes to modify the definition of projects that require an EAW (specifically by utilizing the word “impact”). Current Minnesota Rules provide that the project must “...change or diminish the course, current, or cross section...” This proposed change will increase costs to projects and local governmental units such as Drainage Authorities due to the additional staff time and resources needed for initial data/information gathering to determine and quantify impacts (if any). In some cases, partial drainage of wetlands does not result in a measurable change. The additional time needed to prepare an EAW may also risk or delay third party funding and government programs that support the proposed project. Furthermore, Minnesota Statutes (Section 103E.015) already requires the Drainage Authority to consider a list of criteria – including water quality, wetlands, and environmental impact – before establishing projects. This proposed change unnecessarily duplicates environmental consideration in a way that adds cost and time without additional environmental benefit.

An alternative to the proposed rule change that is more appropriate in the Drainage Authority’s opinion is to specifically exclude/exempt county agricultural drainage projects (establishing drainage, improvement, and repair) completed under Minnesota Statutes Chapter 103E from the requirements for an EAW. If the EQB is concerned some Drainage Authorities are not as diligent in their application of this drainage law, another alternative is to amend the proposed rules to specifically require a more formal or written documentation of the considerations of environmental impact required under Minnesota Statutes Section 103E.015.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please contact me as the county’s Director of Taxpayer Services. I can be reached at [michael.stalberger@blueearthcountymn.gov](mailto:michael.stalberger@blueearthcountymn.gov) or at (507) 304-4257, and I will coordinate follow-up information as necessary.

Sincerely,



Michael Stalberger  
Director, Taxpayer Services

cc: All Blue Earth County Commissioners  
Bob Meyer, Blue Earth County Administrator



**From:** Willis Mattison  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Amended Public Comments on EQB Proposed Rule Changes by Willis Mattison  
**Date:** Monday, February 04, 2019 4:50:19 PM

---

Second resend, Public Notice has period after [erik.dahl@state.us](mailto:erik.dahl@state.us) that apparently causes rejection.

Willis

---

**From:** Willis Mattison [mailto:mattison@arvig.net]  
**Sent:** Monday, February 04, 2019 4:26 PM  
**To:** Erik Dahl  
**Subject:** Amended Public Comments on EQB Proposed Rule Changes by Willis Mattison

Dear Mr. Dahl.

This email will amend my previous email to you on this subject dated Wednesday January 9<sup>th</sup>, 2019.

In my January 9th email I notified you of my intent to provide more detail on specific provision of the proposed rule changes I planned to object and which rule changes I believe may be illegal. The comments below are in fulfillment of that commitment.

**A. Proposed Rule Changes that appear to be illegal:**

**Item 20. Part 4410.4300, subpart 7. Pipelines.**

The SONAR for this section omits any reference to a recent Minnesota Appeals Court ruling on this matter that was upheld by the State Supreme Court. The Appeals Court determined current state statutes and rule require the preparation of a full environmental impact statement (EIS), especially when questions of need and routes of a proposed pipeline decision was to be made. The court appears also to have rendered an even broader opinion declaring that pipeline routing, whether combined with Certificate of Need review process or not was very likely subject to the mandatory requirement for an EIS under MEPA as well. The PUC rules do not appear to be MEPA compliant and no such declaration, finding or opinion either granting, affirming or discounting this position is offered in the SONAR.

These proposed rule changes for pipelines are likely to be challenged in court by citizens should the EQB choose to proceed with these rule changes as proposed. This challenge would be needed to seek clarification by the courts as to whether the PUC rules the EQB proposes to substitute for the current rules were MEPA complaint. Citizens bore the burden of time and expense to gain the Appeals Court ruling stated above and should not have the burden of challenging this propose rule change that would seem to contradict that ruling.

The EQB has an obligation to lift the citizen's burden for testing the legality of this matter in the courts once again. The EQB should provide a legal analysis and

rationale for of these proposed rule changes in the SONAR in light of the appeals court decision. The SONAR should also, with this and all other proposed rule changes disclose the party or party requesting the change. Citizens have a right to know whether this rule change was proposed by EQB staff at their own initiative or if it was at the request of the Public Utilities Commission or some entity in the crude oil or pipeline industry.

**B. Examples of Rules to Which I Plan to Make More Formal Objection to at Hearing:**

1. *Item 14. Part 4410.0500, subpart 6. Exception. Exception. Notwithstanding subparts 1 to 5, the **EQB chair**, may designate within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.*

I plan to object to this change on the grounds that citizens will not be afforded sufficient opportunity for input to a proposed RGU change negotiated between a project proposer, the designated RGU the proposed RGU and the EQB Chair. Posting the proposed change in the EQB Monitor just a week before the EQB Chair makes this change is based on a faulty assumption that an EQB Board member can, in that short time somehow become aware and adequately represent objections any citizen may have. All changes in RGU should be made at regularly scheduled EQB meetings in a transparent public setting with adequate notice to the public. I will offer more rationale for this arrangement at hearing.

**C. Absence of Proposed Rule Changes Citizens Have Called For:**

1. Civic Engagement -Citizens have requested EQB adopt rules and guidelines that adopt more effective means by which the public can be more effectively involved in the environmental review process. The state has an approved plan for civic engagement that describes far more effective methods for citizen engagement that is currently required in the MEPA process.. The EQB Board has had several rounds of presentations on these methods where citizens also appeared and urged the Board to incorporate these techniques in environmental review procedural rules. No such rules are proposed in this round. This should be remedied or explained by EQB staff at hearing.
2. Lower Mandatory EAW and EIS Thresholds for Green House Gas (GHG) Emissions- New information is available from the U.N. Intergovernmental Panel on Climate Change that many far smaller sources of GHG are cumulatively significant and in need of drastic reduction if not elimination to meet the scientifically justifiable goals established to hold climate change impacts below catastrophic levels. These thresholds should be brought into alignment with U.N IPCC recommendations to assure all contributing sources are assessed for their cumulative impacts and all reasonable alternatives are considered.

3. Natural Carbon Sequestration - The U.N. IPCC report describes rates and quantities of carbon dioxide that will need to be removed from the atmosphere on a certain schedule to achieve the science-based goals for avoiding catastrophic climate change impacts. Natural (plant and soil) sequestration of carbon is the cheapest and one of the more effective methods for atmospheric carbon dioxide removal and has enormous co-benefits for water quality, wildlife habitat and food production. The EQB will need to establish mandatory EAW and EIS thresholds for natural sequestration potential either to be gained or lost as the result of a proposed project and its alternatives.
4. Energy Source and Use Efficiencies – The U.N. IPCC has advised that all existing and proposed new structures, residential, commercial, industrial and institutional must be upgraded for renewable energy source and reduced energy demand through significantly improved conservation measures such as super-insulation and energy saving windows and doors. These energy saving practices will be necessary to meet science-base climate change goals. Very low thresholds for mandatory EAW and EIS review need to be establish that account for the cumulative nature of many small but otherwise insignificant projects with energy demands and energy losses needs to be established. Alternative measures for achieving these energy consumption reductions need to be closely examined in environmental review.

Time does not allow me to provide any further examples of my objections to rules changes proposed and rules changes needed that are not proposed. I will continue to offer more information in advance of hearings should this be of assistance to EQB staff.

Thank you,

Willis Mattison,  
42516 State Highway 34  
Osage, Minnesota 56570  
218-841-2733



Virus-free. [www.avast.com](http://www.avast.com)

From: Willis Mattison  
To: [Dahl, Erik \(EOB\) - Wilson, Denise \(EOB\)](#)  
Subject: Error Message Received when Using Erik Dahl's Email Address  
Date: Monday, February 04, 2019 4:56:12 PM

Undeliverable: Amended Public Comments on EQB Proposed Rule Changes by Willis Mattison - Report

File Edit View Insert Tools Actions Help

Send Again...

From: System Administrator  
To: Willis Mattison  
Subject: Undeliverable: Amended Public Comments on EQB Proposed Rule Changes by Willis Mattison  
Sent: Mon 2/4/2019 4:26 PM

Your message did not reach some or all of the intended recipients.

Subject: Amended Public Comments on EQB Proposed Rule Changes by Willis Mattison  
Sent: 2/4/2019 4:26 PM

The following recipient(s) could not be reached:

Erik Dahl on 2/4/2019 4:26 PM  
The requested operation failed.

Type here to search

4:52 PM 2/4/2019

Virus-free. [www.avast.com](http://www.avast.com)

**From:** Willis Mattison  
**To:** [Wilson, Denise \(EQB\)](#)  
**Cc:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: Proposed EQB Rule Changes - Public Comment and Request For Additional Hearings  
**Date:** Monday, February 04, 2019 5:03:27 PM  
**Attachments:** [AMENDED DUAL NOTICE.doc](#)

---

Denise,

These are the comments I sent back on January 9<sup>th</sup> that I want to be sure are in the public record. Let me know if there are any further glitches such that these comments were not received in proper form and schedule.

Willis

P.S.: I corrected Erik's email address to delete the period at the end and will test it again here by copying him with this message.

---

**From:** Willis Mattison [mailto:mattison@arvig.net]  
**Sent:** Wednesday, January 09, 2019 11:20 AM  
**To:** 'erik.dahl@state.mn.us.'  
**Subject:** Proposed EQB Rule Changes - Public Comment and Request For Additional Hearings

Dear Mr. Dahl,

In regard to the Minnesota Environmental Quality Board's Amended Dual Notice of Intent (attached) to amend administrative rules governing environmental review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 I wish to make the following comments in opposition, make requests for public hearings, request addition of locations for hearings and contest the legality of portions of the rule changes:

Specifically these early comments are intended to:

1. Inform the EQB of my intent to make more extensive and substantive comments in opposition to the entirety of proposed amendments at a later date but before the comment deadline on February 4th and;
2. Provide EQB staff with early notice of my request for formal public hearings on the proposed amendments, and;
3. Request that more than just the two proposed hearings be scheduled and that these additional hearings be at locations more accessible to citizens in Northern Minnesota. Locations such as Detroit Lakes, Bemidji, Brainerd and/or Duluth should be considered. At least two additional or alternative hearing locations and dates are needed. A St. Cloud hearing location may have been intended to serve citizens in northern Minnesota but that location does not serve that purpose adequately. It is still more than a two hour drive to St. Cloud from my and many other major communities in this part of the state. For efficiency, the St. Cloud location could be entirely replaced by at least two hearing locations further north. This early request for additional or relocation of hearings is made

now in order for EQB and ALJ staff to have sufficient time to make the necessary adjustments in hearing schedule and locations before the public comment period expires, and;

4. Notify EQB staff and the ALJ that I plan to contest the legality of several parts of the propose rule changes. More detail on that challenge of legality with more specificity on which rules are being challenged will follow in the supplementary comments I plan to submit before the close of the comment period in February.

Thank you for considering my request and I would appreciate learning of the EQB's decision on my request for additional hearings at more convenient locations as soon as possible. If my request for additional hearings is denied, please include the rationale used to support that decision.

Regards,

Willis Mattison  
42516 State Highway 34  
Osage, Minnesota 56570



Virus-free. [www.avast.com](http://www.avast.com)

**From:** Winiecki, Tony  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Freese, Lisa](#)  
**Subject:** EQB Mandatory Category Rulemaking Comments - Scott County  
**Date:** Monday, February 04, 2019 6:49:26 PM  
**Attachments:** [EQB Rule Revision Comments Scott County.pdf](#)

---

Hello Mr. Dahl,

Please find comments attached from Scott County regarding the mandatory category rule changes.

Thank you for your consideration of our concerns and recommendations.

Sincerely,

Tony

Anthony J. Winiecki, P.E.

County Engineer

**Scott County Transportation Services Division**

600 Country Trail East | Jordan, MN 55352-9339

Direct: 952-496-8008 | Office: 952-496-8346

[twiniecki@co.scott.mn.us](mailto:twiniecki@co.scott.mn.us)



## SCOTT COUNTY TRANSPORTATION SERVICES DIVISION

HIGHWAY / MOBILITY MANAGEMENT / FLEET  
 600 COUNTRY TRAIL EAST · JORDAN, MN 55352-9339  
 (952) 496-8346 · Fax: (952) 496-8365 · www.scottcountymn.gov

**LISA J. FREESE**  
 Transportation Services Director

**ANTHONY J. WINIECKI**  
 County Engineer

**TROY BEAM**  
 Mobility Services & Fleet Manager

February 4, 2019

Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Scott County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. Scott County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.



Supporting information:

- 1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
- 2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

4. **The proposed revisions to subpart 27 item B would result in new costs** for Scott County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis**. For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes**.

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government**. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice**.

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

The time required to complete the EAW process may also increase for all projects conducting **environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
  
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW**. For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
  
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review**. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**" USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-

specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

### C. Requested Actions

1. **Scott County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.

2. Scott County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at [twiniecki@co.scott.mn.us](mailto:twiniecki@co.scott.mn.us) (952-496-8008).

Sincerely,



Anthony J. Winiecki, P.E.  
County Engineer

C: Lisa Freese, Transportation Services Division Director

**From:** Jo Haberman  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 31, 2019 9:16:16 PM

---

Jo Haberman  
1900 St. Louis Avenue  
Apartment 103  
Duluth, Minnesota 55802

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized.

For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Jo Haberman



**From:** CHARLES VIREN  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Change in rule to exempt mandatory review  
**Date:** Thursday, January 31, 2019 9:20:16 PM

---

Sent from my iPhone

Katherine McClure  
POBox 1258  
Grand Marais, MN  
55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules,  
4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the

first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely

Katherine McClure

**From:** Lynn Barringer  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Thursday, January 31, 2019 9:54:57 PM

---

Lynn Barringer  
 60 Trailsyde  
 Hovland, MN. 55606

To whom It May Concern:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Lynn Barringer

**From:** John P  
**To:** [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking Comment  
**Date:** Friday, February 01, 2019 8:20:10 AM

---

John Praxmarer  
63 Maple Hill Dr.  
Grand Marais, MN 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,



**From:** Martha  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 8:28:35 AM

---

Martha Marnocha  
 63 Maple Hill Drive  
 Grand Marais, MN 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Martha Marnocha

**From:** Lawrence Landherr  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Environmental Quality Board Review Proposed Rule Change  
**Date:** Friday, February 01, 2019 9:11:11 AM

---

Lawrence Landherr  
7740 W. Hwy 61  
Schroeder, MN. 55613

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410,4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.



Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Lawrence Landherr

**From:** James Reents  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Rule making  
**Date:** Friday, February 01, 2019 11:50:31 AM

---

This email is to request a public comment and public hearing process. I am in opposition to and request public hearings be held on the proposed changes to EQB rules in Chapter 4410 governing environmental review.

Furthermore, I am requesting public hearings be held in outstate locations including Northern Minnesota.

--

James W Reents

**From:** Stephanie Johnson  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 12:15:16 PM

---

Stephanie Johnson  
 290 Otter Trail  
 Grand Marais, MN 55604

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
 Stephanie Johnson

**From:** CHARLES JOHNSON  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 12:29:05 PM

---

Charles Johnson  
 12915 W. 1st Street  
 Duluth, MN 55808

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this

very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Charles Johnson

**From:** Angie Arden  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 12:40:21 PM

---

Angie Arden  
 12915 W. 1st. Street  
 Duluth, MN 55808

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Angie Arden

**From:** Kris  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rule Making  
**Date:** Friday, February 01, 2019 1:26:33 PM

---

Kris Barber  
 18 Pendant Lake Trail  
 Grand Marais, MN 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules,  
 4410.0200, 4410.0500, 4410.4300, 4410,4400, 410,5200, 4410.7904, 4410.7906,  
 4410.7926, 4410.4600

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized.

For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing



or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Kris Barber

Sent from my iPhone

**From:** William Barton  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** EQB rules revisions  
**Date:** Friday, February 01, 2019 1:32:18 PM

---

To: [Erik.Dahl@state.mn.us](mailto:Erik.Dahl@state.mn.us); [Denise.wilson@state.mn.us](mailto:Denise.wilson@state.mn.us)

From: William Barton [bartonwf@yahoo.com](mailto:bartonwf@yahoo.com)

**Subject:** EQB Environmental Review Rulemaking: Comment and Request for Hearing

Dear State of Minnesota,

This email letter is to state my opposition to changes in the EQB rules and request public hearings be held on the proposed changes to EQB rules in Chapter 4410 governing environmental review.

Furthermore, I request public hearing locations be added to include cities in Northern, Western, and Southern Minnesota in addition to Saint Paul. ( eg: Brainerd, Detroit Lakes, Duluth, Bemidji, East Grand Forks, and Winona)

Sincerely,

William Barton

533 Cretin Avenue S

Saint Paul, MN 55116

**From:** Denny Fitzpatrick  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 1:38:02 PM

---

DENNIS FITZPATRICK  
 210 BIRCH DR  
 PO BOX 563  
 GRAND MARAIS MN 55604-0563  
 218-370-1500  
[dfitz@boreal.org](mailto:dfitz@boreal.org)

To whom it may concern:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410,4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I **OPPOSE** the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I **OPPOSE THE CHANGES** to the rules in general and will be more specific at the hearing.

I **REQUEST PUBLIC HEARINGS** in Grand Marais, Minnesota, Bemidji, Minnesota, and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely, Dennis FitzPatrick

**From:** Carla J Stueve  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#); [Carl Michaud](#); [Christopher Sagsveen](#); [Jessa Trbojevich](#); [Jacob Z Bronder](#); [Rosemary A. Lavin](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 2:04:25 PM  
**Attachments:** [image003.png](#)  
[Hearing Request for Environmental Review Proposed Rule Change - Hennepin Co.pdf](#)

---

Mr. Dahl,

Attached is a letter from Hennepin County to request a hearing for the proposed amendment to the rules governing environmental review, Minnesota Rules 4410.4300. Thank you for your consideration of our concerns and recommendations. If you have any questions please do not hesitate to contact me at 612-596-0356 or [carla.stueve@hennepin.us](mailto:carla.stueve@hennepin.us).

Thank You,

**Carla Stueve, P.E., P.T.O.E.**

Director/County Engineer

Transportation Project Delivery

Office: 612-596-0356 | Mobile: 612-281-0657

[carla.stueve@hennepin.us](mailto:carla.stueve@hennepin.us) | [hennepin.us](http://hennepin.us)

Public Works Facility  
1600 Prairie Drive  
Medina, MN 55340



**Disclaimer:** If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system.

HENNEPIN COUNTY  
MINNESOTA

February 1, 2019

Mr. Erik Cedarleaf Dahl  
Environment Quality Board  
520 Lafayette Road  
St. Paul, MN 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to request a hearing regarding proposed amendments to Minnesota Rules governing environmental review placed on public notice by the Environmental Quality Board (EQB) starting November 13, 2018.

Hennepin County believes that environmental review is a good investment and is interested in improved environmental protection throughout the State, not only within our borders. However, several other counties have expressed concern that the proposed change to 4410.4300, subpart 27, item B "Wetlands and Public Waters" may be costly and have a negative impact on project delivery timelines without providing much environmental benefit.

We are interested in seeing and hearing detailed evidence, and believe that a public hearing would be a good forum in which to learn more about the arguments on both sides of this issue.

Sincerely,



Carla Stueve, P.E.  
County Highway Engineer

cc: Carl Michaud, Assistant County Administrator, Public Works  
Rosemary Lavin, Director, Environment and Energy  
Chris Sagsveen, Director, Transportation Operations  
Jessa Trbojevich, Division Manager, Transportation Project Delivery Design  
Jacob Bronder, Division Manager, Transportation Project Delivery Bridge



**From:** Sharon Frykman  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 2:12:30 PM

---

Sharon Frykman  
306 County Rd 44  
Grand Marais, MN 55604

Mr. Dahl:

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Sharon Frykman

**From:** [Wilson, Denise \(EQB\)](#)  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** FW: EQB proposed rule changes  
**Date:** Friday, February 01, 2019 3:03:37 PM

---

## Denise Wilson

Director, Environmental Review Program

### Minnesota Environmental Quality Board

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2523

[Denise.Wilson@state.mn.us](mailto:Denise.Wilson@state.mn.us)



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

---

**From:** Mike Tauber <mjtauber42@outlook.com>  
**Sent:** Friday, February 1, 2019 12:57 PM  
**To:** Wilson, Denise (EQB) <denise.wilson@state.mn.us>  
**Subject:** EQB proposed rule changes

To: Mn Environmental Quality Board  
 2019  
 From: Northern Water Alliance of Mn

Feb 1,

Hello all at EQB,

It is our understanding that the EQB may have touched a LGU nerve with the proposed rules changes to **4410.4300 sub 27** as it affects wetlands, and this alone should require your office to have multiple hearings on the topic around the state where this item and all the others broached in comments submitted could be discussed by those affected. It appears there was a **major oversight**, or that there is a **large misunderstanding** of the EQB's intent here.

Monitoring of **radioactive materials** when mining should be done without second thought, even if it is not "of interest" to the proposer. A friendly remark here... why not



have the EQB travel to the areas of Mn where uranium is present and talk with those living in the area about eliminating this type of monitoring? Do you think there might be a bit of tongue wagging? Double dog dare you.

In all seriousness, consider this a request for the **reinstatement of 4410.4400 Subpart 8 Lines 20.1 through 20.3**, the Mandatory Environmental Review for the Monitoring of radioactive characteristics in the metallic mineral mining processing permits that are either pending or proposed. The language to be reinstated reads as follows: "For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics; the DNR shall be the RGU."

As stated in the comment section by the ELPC, the language involved from **4410.4300-.4400** could be seen as **arbitrary concerning pipelines**, and this **needs public hearing in the area affected**, anything less would appear dubious with this hot-button issue.

The rule of most concern to Minnesotans everywhere should be **4410.4300 subp.36.B that allows for removal of forest or natural vegetation from up to one square mile (640 acres) of land without environmental review**. This **archaic rule** and it's assignment to small (sometimes inept) or unduly influenced LGU's has done as close to nothing as possible for the ecology of Minnesota. The idea that one square mile can be completely stripped of vegetation without dire consequences to ecology is ludicrous, and even this extremely high threshold is ignored by RGU's and large companies. Often the amount of land "developed" is taken to be 630 acres, or done in consecutive years, across government boundaries, or proposed by affiliates of a project proposer so as to not appear on paper as phased or connected activity. By not changing this rule to something more realistic (and focusing on enforcement) EQB is condemning rural Mn to continuance of the "new normal", annual environmental quality reductions, allowing, in particular, the slow death of formerly large intact ecosystems through enormous forest-to-field operations driven primarily by extractive, chemical and irrigation intensive row crop agriculture. At the very least, center pivot irrigation sites should be considered a permanent conversion, and an 80 acre environmental review threshold should be considered to slow deforestation.

As per Mn statute, I request a public hearing on all these items, and any others brought into question by members of the public, **in the areas most affected**. **Not holding public hearings in greater Mn has the effect of silencing those most affected by the proposed rules changes, denying participation because of geography.**

Thank you for your time, I look forward to seeing you at the meetings, please notify me of the times and places,

Mike Tauber  
2540 Co 41 Nw  
Backus Mn 56435  
218 675 5717

[mjtauber42@outlook.com](mailto:mjtauber42@outlook.com)

Northern Water Alliance representative

2018 representative for the Citizens' Petition for Environmental Assessment in the  
Pineland Sands Area

**From:** Murray, Emily  
**To:** [Wilson, Denise \(EQB\)](#); [Dahl, Erik \(EQB\)](#)  
**Cc:** [Lon Aune](#); [Wayne Sandberg \(wayne.sandberg@co.washington.mn.us\)](mailto:Wayne.Sandberg@co.washington.mn.us)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 3:16:25 PM  
**Attachments:** [MCEA EQB Comment Letter.pdf](#)

---

Good afternoon:

On behalf of the Minnesota County Engineers Association, please find attached a comment letter regarding the EQB Mandatory Category Rulemaking. We appreciate the opportunity to comment on the proposed rule changes. Please let me know if you have any questions.

Emily Murray  
Transportation & Infrastructure Policy Analyst  
Association of Minnesota Counties  
Office Phone: 651-789-4339  
Cell Phone: 952-994-8816  
[emurray@mncounties.org](mailto:emurray@mncounties.org)



# Minnesota County Engineers Association



1360 University Avenue West, Suite 131 • St. Paul, MN 55104

[mncountyengineers.org](http://mncountyengineers.org)

**PRESIDENT  
LON AUNE**

County Engineer  
**Marshall County**  
447 South Main Street  
Warren, MN 56762  
(218) 745-4381

[lon.aune@co.marshall.mn.us](mailto:lon.aune@co.marshall.mn.us)

**VICE PRESIDENT  
WAYNE SANDBERG**

Deputy Public Works Director  
County Engineer  
**Washington County**  
11660 Myeron Road North  
Stillwater, MN 55082  
(651) 430-4339

[wayne.sandberg@co.washington.mn.us](mailto:wayne.sandberg@co.washington.mn.us)

**TREASURER  
STEVE KUBISTA**

County Engineer  
**Chippewa County**  
902 North 17th Street  
Montevideo, MN 56265  
(320) 269-2151

[skubista@co.chippewa.mn.us](mailto:skubista@co.chippewa.mn.us)

**SECRETARY  
JODI TEICH**

County Engineer  
**Stearns County**  
455 28th Avenue South  
Waite Park, MN 56387  
(320) 255-6180

[jodi.teich@co.stearns.mn.us](mailto:jodi.teich@co.stearns.mn.us)

**PAST PRESIDENT  
KEVIN PEYMAN**

County Engineer  
**Martin County**  
1200 Marcus Street  
Fairmont, MN 56031  
(507) 235-3347

[kevin.peyman@co.martin.mn.us](mailto:kevin.peyman@co.martin.mn.us)

**AFFILIATED WITH**



January 17, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

A. The Minnesota County Engineers Association (MCEA) **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

B. MCEA **strongly opposes** the proposed B changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. **The existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):  
 In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Minnesota cities, counties, and project proponents. MCEA has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted

with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.
7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they

streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.

8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site “**USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.**” USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).

“It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental



documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### A. Requested Actions

1. **MCEA requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. MCEA recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

##### **Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will change or diminish the course, current or cross section of ~~40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and

- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me [lon.aune@co.marshall.mn.us](mailto:lon.aune@co.marshall.mn.us).

Sincerely,



Lon Aune, Marshall County Engineer  
MCEA President

**From:** nanakay@unitelc.com  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking Comment  
**Date:** Friday, February 01, 2019 3:21:50 PM

---

February 1, 2019

To: Mr. Dahl and Ms Wilson,

I am writing to provide comment on the Proposed Permanent Rules Relating to Environmental Review: Minnesota Categories, Revisor ID: R- 4157.

Pipelines should be in the mandatory EIS category for both application for certificate of need and/or routine permit. I question the legality of the rule 4410.4400 and 4410.4300 with regard to existing law. MEPA law and the MN Court of Appeals Ruling should be upheld.

I am **opposed** to the new sentence in the proposed new MN R.4410.4300, subp. 7, "Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G." I am **STRONGLY OPPOSED** to any possibility of the PUC going back to applicant-prepared comprehensive environmental assessments. This is the fox guarding the hen house- "our precious natural resources."

With regard to 4410.4300, subpart 7, Oil pipelines should not be in the EAW category at all, but in the mandatory EIS category for both application for certificate of need and/or routing.

**I also write to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review. These changes are of great importance to this state and the public deserves accessible public hearings.**

Thank you for this opportunity to comment.

Sincerely,

Deanna Johnson  
15559 Explorer Circle  
Park Rapids, MN 56470

**From:** whatisreality@integra.net  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 3:22:01 PM

---

Charles Perrin  
19635 Southfork Drive  
Prior Lake, MN 55372

To whom it concerns:

RE: AMENDED DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized.

For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Charles Perrin

**From:** Kris and Jill Barber  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Friday, February 01, 2019 5:27:17 PM

---

Jill Barber  
18 Pendant Lake Trail  
Grand Marais, MN 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Jill Barber



**From:** Lowell Deede  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** EQB Environmental Review Rulemaking: Comment and Request for Hearing  
**Date:** Friday, February 01, 2019 6:52:23 PM

---

Erik and Denise,

Changing Rules without a Public Hearing is not consistent with the intent our fore fathers had in mind when they created our government. Be transparent and inclusive! I recommend that Public Hearings be automatic when rule changes are considered. This specifically pertains to EQB rules in Chapter 4410 governing environmental review. I also request that public hearing locations include at least Detroit Lakes in northern Minnesota.

Lowell Deede  
21726 County Highway 21  
Detroit Lakes, MN 56501

**From:** Jayne Johnson  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Saturday, February 02, 2019 8:41:16 AM

---

Jayne Johnson  
 52 Black Spruce Trl  
 Grand Marais, Mn. 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Jayne Johnson

**From:** Don Pietrick  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** MandatoryCategory Rule making: Comment  
**Date:** Saturday, February 02, 2019 8:46:34 AM

---

Don Pietrick  
P. O. Box 242  
132 Willard Lane  
Lutsen, MN 55612

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely, Don Pietrick

**From:** wilm@tds.net  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** AMENDED DUAL NOTICE  
**Date:** Saturday, February 02, 2019 8:46:45 AM

---

Dan Wilm  
 35559 Northview Harbor Drive  
 Pequot Lakes, MN 56472

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Daniel J Wilm  
Pequot Lakes, MN

**From:** Don Pietrick  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rule making: Comment  
**Date:** Saturday, February 02, 2019 9:38:48 AM

---

Lynn Pietrick  
P O Box 242  
132 Willard LN  
Lutsen, MN  
55612

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.



Sincerely,  
Lynn Pietrick

**From:** MICHAEL C  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Saturday, February 02, 2019 9:50:51 AM

---

Michael & Mary Norlander  
 194 Willard Lane  
 Pike Lake  
 Lutsen, MN 55612

*Minneapolis address:*  
 5704 Garfield Ave.  
 Minneapolis, MN 55419

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes,

streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,

Michael & Mary Norlander

**From:** David Zentner  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Denis.Wilson@state.mn.us](mailto:Denis.Wilson@state.mn.us)  
**Subject:** EQB-Env. Review Rulemaking without public hearings  
**Date:** Saturday, February 02, 2019 11:11:13 AM

---

Mr. Erik Dahl ;

I am aware of, and appreciative of the EQB efforts to review EQB rule-making and procedures for public access. I am requesting that you do NOT proceed to final revisions with-out several public hearings. I am well aware of the extra staff, time, taxpayer expense and perhaps stress on staff time. However I would counter any of those concerns to point out the importance of hearing the public on this process. This review arose out of the persistence of active and well informed participants in some of Minnesota's very pressing natural resource issue decisions. Line 3 and Poly Met among others come to mind. The difficulty and standing to which citizens are held is often discouraging and a source of public cynicism about the "system". Corporate access and power today has evolved to the point where numerous credible volumes sincerely question the ability of state government, and even nations to succeed in meeting fundamental regulatory obligations.

The changes since the EQB was established are of major magnitude. Beginning in the 1980s with the drive to promote corporate growth in the name of "global competition", and waning interest, by government in general in anti-trust issues (market control by fewer and fewer players) have enlarged the challenges considerably. I would add that the changes in average citizens and families duties make public issue participation a sacrifice that is not easy, re-thinking this process is vital to citizen access and a more level playing field for broad and informed participation in issues affecting our Minnesota's lands, waters, wildlife and citizens.

EQB should be, and was designed to be a major trustee of our natural resources endowment. The revenue from that endowment truly is intended to be for all of the people. Special interest' who would request use of the corpus in that endowment must not be allowed to use that corpus in a manner so as to rob the beneficiaries of the resource dividends, nor diminish the corpus upon which their dividends in perpetuity rest.

We are surrounded daily by evidence that we are near a tipping point on a variety of issues that command our attention in regard to Minnesota's remaining natural resources.

I urge you to recognize that this does mandate public review in strategies that result in visiting several sites in strategic locations thru-out Minnesota.

Sincerely;

Dave Zentner, Past National President Izaak Walton League  
Member MPCA Board 1974-79  
Co-Chair LCMR reform to LCCMR-2014  
Chair Capitol Rally for Legacy Amendment  
Member Conservation Legacy Council 2009

**From:** Phil Oswald  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Saturday, February 02, 2019 12:54:48 PM

---

From:  
 Phil Oswald  
 PO Box 696  
 Grand Marais, MN 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
 Phil Oswald

Phil Oswald  
Grand Marais, Minnesota

**From:** mike  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** AMENDED DUAL NOTICE  
**Date:** Saturday, February 02, 2019 1:09:46 PM

---

Mike Kolasinski  
607 Barker Lake Rad  
Lutsen, Mn. 556122

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor’s ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized.

For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection

strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely, M. Kolasinski



Virus-free. [www.avast.com](http://www.avast.com)



**From:** Robin R Penner  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, February 03, 2019 3:11:44 PM

---

Robin Penner  
 4725 Chicago Bay Road  
 Box 181  
 Hovland, MN 55606

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota; Bemidji, Minnesota; and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review. From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now

global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Robin Penner

**From:** Robin Nicholson  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Ruling Making: Comment  
**Date:** Sunday, February 03, 2019 6:49:32 PM

---

Robin Nicholson  
 313 2nd Ave. W  
 Grand Marais, MN  
 55604

To whom it concerns:

**RE: AMENDED DUAL NOTICE:**Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Robin Nicholson

Sent from my iPhone  
Robin Nicholson

**From:** greg gailen  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Amended Dual Notice, Proposed Border to Border Trail  
**Date:** Sunday, February 03, 2019 10:13:37 PM

---

Gregory M. Gailen  
 PO Box 914  
 Grand Marais, MN 55604

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

Greetings,

I would like to communicate my opposition to the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and am interested in providing detailed reasons for my opposition at a hearing on this matter. I believe that hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota would be important in order to properly address this issue.

I would like to see every proposed route undergo a complete environmental review and am opposed to any actions that would shortcut this process. Please schedule the above hearings so that this issue can be reviewed by interested citizens.

Recent studies indicate that some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments.

Sincerely,

Gregory M. Gailen

**From:** Elizabeth Baker-Knuttila  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Sunday, February 03, 2019 11:56:36 PM

---

To: Mr. Dahl and Ms. Wilson:

I am writing to request public hearings in multiple parts of the state on the Proposed Permanent Rules Relating to Environmental Review.

I strongly object to the proposed following rules:

4410.0500 Subp.6 (RGU Selection Procedures)

4410.4300 (Mandatory EAW Categories)

4410.4400 (Mandatory EIS Categories)

In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling.

Thank you for addressing my comments.

Sincerely,  
Elizabeth Baker-Knuttila  
12029 Far Portage Dr.  
Park Rapids, MN 56470

**From:** Eric Gagner  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 7:44:46 AM

---

Eric Gagner  
 3540 Croftview Terrace  
 Minnetonka MN 55345

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.



Sincerely,  
Eric Gagner

**From:** Kwilas, Tony  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Seuffert, Will \(EQB\)](#)  
**Subject:** FW: Attached Image/Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 9:33:48 AM  
**Attachments:** [0465\\_001.pdf](#)

---

Attached are the Chamber's comments on the proposed rules governing Environmental Review.

TK

**From:** CanonC7065@mnchamber.com [mailto:CanonC7065@mnchamber.com]  
**Sent:** Monday, February 04, 2019 9:28 AM  
**To:** Kwilas, Tony <tkwilas@mnchamber.com>  
**Subject:** Attached Image



January 2, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Road  
St Paul, Minnesota 55129

Dear Erik,

The Minnesota Chamber of Commerce appreciates the opportunity to submit comments on the proposed amendment to Rules Governing Environmental Review, Minnesota Rules 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600. The Chamber represents over 2,300 businesses with over 500,000 employees who support policies that reduce the costs of doing business in Minnesota, ease the regulatory burden while also providing clarity and certainty on rules and regulations all while protecting the environment and natural resources of the state.

The Chamber opposes proposed Minn. R. 4410.4300, subp.27 (Wetland Rule) because it is neither necessary nor reasonable. We propose that the Wetland Rule be deleted.

As noted in the Statement of Need and Reasonableness (SONAR), the proposed rule does not consider the Wetland Conservation Act (WCA), as the WCA was enacted into law after the establishment of mandatory categories for wetlands. The SONAR justifies the changes to the Wetland Rule because "[t]he proposed change is needed and reasonable as it reflects the current regulatory provisions under WCA ..." and "...incorporate(s) more recent WCA standards..." But because WCA has been enacted, the proposed rule is neither needed nor reasonable.

As stated in the Minn. R 8420.0100, the purpose of WCA is to:

- "A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent"

And, “(t)he regulatory provisions of the Wetland Conservation Act advance the purpose ... by requiring persons proposing to impact a wetland to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value.”

The WCA also specifically exempts certain activities from regulation and expressly specifies the respective roles for local government units, the Board of Water and Soil Resources and the Department of Natural Resources.

The Environmental Quality Board’s 2017 Quick Reference: Environmental Assessment Worksheet states:

“The EAW is a brief document designed to lay out the basic facts of a project necessary to determine if an Environmental Impact Statement (EIS) is required for the proposed project ... (and to) provide the information needed to determine if the project will have significant environmental impacts. In addition to the legal purpose of the EAW in determining the need for an EIS, the EAW also provides permit information, informs the public about the project, and helps identify ways to protect the environment. The EAW is not meant to approve or deny a project, but instead act as a source of information to guide other approvals and permitting decisions.”

As such, the WCA fulfills each and every purpose of an EAW, in fact in more depth and specificity, thereby fully occupying the field of wetland regulation making any additional review redundant and unnecessary. Accordingly, the Wetland Rule should be deleted.

Thank you for the opportunity to comment on the proposed rule changes. If you have any questions, please feel free to contact Tony Kwilas at 651-292-4668 or [tkwilas@mnchamber.com](mailto:tkwilas@mnchamber.com).



Tony Kwilas  
Director, Environmental Policy  
Minnesota Chamber of Commerce

**From:** Paul Sandy  
**To:** [Dahl, Erik \(EQB\)](#)  
**Cc:** [Cassandra Torstenson](#)  
**Subject:** Request for Public Hearing - EQB Proposed Rule Change Part 4410, subpart 27  
**Date:** Monday, February 04, 2019 11:00:44 AM  
**Attachments:** [20190204\\_EQBRuleChangeAmendment.pdf](#)

---

Erik,

Please see the attached letter from the City of Brainerd regarding the EQB proposed rule change and a request for a public hearing about the proposed change.

Please let me know if you have any questions.

Thanks

**Paul G. Sandy, P.E.**

City Engineer | City Of Brainerd  
501 Laurel Street, Brainerd, MN 56401  
218.454.3411 direct | 218.828.2316 fax  
218.513.0172 mobile  
Email | [psandy@ci.brainerd.mn.us](mailto:psandy@ci.brainerd.mn.us)  
[www.ci.brainerd.mn.us](http://www.ci.brainerd.mn.us)

Email correspondence to and from the City of Brainerd government offices is subject to the Minnesota Government Data Practices Act and may be disclosed to third parties.

CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.



January 4, 2019

Erik Cedarleaf Dahl  
 Planning Director  
 Environmental Quality Board  
 520 Lafayette Road North  
 St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Brainerd is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

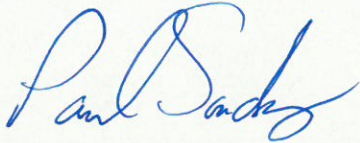
- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

The City of Brainerd strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Sandy". The signature is fluid and cursive, with the first name "Paul" and last name "Sandy" clearly distinguishable.

Paul G. Sandy, P.E. – City Engineer  
City of Brainerd

**From:** Stacy Mader  
**To:** [Dahl, Erik \(EOB\)](#); [Wilson, Denise \(EOB\)](#)  
**Cc:** [Dan Mader](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 11:05:04 AM

---

Stacy and Dan Mader  
14251 Arbre Lane N  
Hugo, MN 55038

130 Willard Lane  
Lutsen, MN 55612

To whom it concern:

RE: AMENDED DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

We are writing to say we oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules. We oppose the changes to the rules in general and will be more specific at the hearing. We request public hearings in Grand Marais, Minnesota, Bemidji, Minnesota and Duluth, Minnesota.

One example of the proposed changes we oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails. *Every proposed route or trail should undergo a mandatory environmental review.*

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,



Stacy and Dan Mader

**From:** Krysten Foster  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** RE: Notice of Intent to Adopt Rules Governing Environmental Review  
**Date:** Monday, February 04, 2019 11:21:33 AM  
**Attachments:** [Request for Public Hearing.pdf](#)

---

Good morning,

Please consider the attached request for public hearing concerning the Environmental Quality Board's Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600.

Thank you for your time,

Krysten Saatela Foster, P.E.  
Lake & Cook Counties' Highway Engineer  
601 Third Avenue, Two Harbors, MN 55616  
Lake County: 218.834.8380  
609 E. 4<sup>th</sup> Avenue, Grand Marais, MN 55604  
Cook County: 218.387.3014



**Krysten S. Foster**  
**County Highway Engineer**

Lake County Service Center  
Highway Department  
Office Location: 616 Third Avenue  
Mailing Address: 601 Third Avenue  
Two Harbors, MN 55616  
Office Phone: (218)-834-8380  
Email: [krysten.foster@co.lake.mn.us](mailto:krysten.foster@co.lake.mn.us)

February 4, 2019

*Sent via Email: Erik.Dahl@state.mn.us*

Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

**Subj: Proposed Amendment to Rules Governing Environmental Review**

Dear Mr. Dahl:

The purpose of this letter is to submit a request for a hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on public notice by the Environmental Quality Board (EQB) published on November 13, 2018. On behalf of the Lake County & Cook County Highway Departments, I write in support of the following two proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the goal of improving environmental review efficiency:

1. Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.
2. Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

Next, I write to request a hearing concerning the proposed changes to 4410.4300, subpart 27, item B "Wetlands and Public Waters." It appears this proposed revision would significantly increase the number of projects that trigger preparation of an EAW, which would result in significant new costs for Lake & Cook Counties as well as other road authorities. The Minnesota County Engineers Association (MCEA) estimates the proposed revisions would cost Minnesota counties at least an additional \$2,000,000 – or more – annually (aggregated statewide) for routine road improvement projects that qualify for the Local Road Wetland Replacement Program. I oppose this rule change to 4410.4300, subpart 27, item B as currently written.

Last but not least, I would like to thank the EQB for your work over the past several years on regulatory streamlining efforts and for the opportunities provided in 2016 for road authorities and other interested persons to provide input. If you have any questions, I can be reached at [Krysten.Foster@co.lake.mn.us](mailto:Krysten.Foster@co.lake.mn.us).

Sincerely,

Krysten Saatela Foster, P.E.

Lake & Cook Counties' Highway Engineer

**From:** whatisreality@integra.net  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 12:02:48 PM

---

Charles Perrin  
 19635 Southfork Drive  
 Prior Lake, Mn. 55372

To whom it concerns:

RE: AMENDED DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review.

From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized.

For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on

these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Charles Perrin

**From:** Robert Tamanaha  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Hearings  
**Date:** Monday, February 04, 2019 12:53:28 PM

---

Robert Tamanaha  
3911 18th Ave. S.  
Minneapolis, MN 55407

To whom it concerns:

**RE: AMENDED DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157

Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600

---

I am writing to say I oppose the language in the proposed changes to the environmental review section of rules and request public hearings on the Environmental Quality Board's proposed changes to these rules.

I oppose the changes to the rules in general and will be more specific at the hearing.

I request public hearings in Grand Marais, Minnesota; Bemidji, Minnesota; and Duluth, Minnesota.

One example of the proposed changes I oppose is the proposed rule change to exempt from mandatory review the action of designating an existing, legally constructed route, such as a logging road for motorized recreational trails.

Every proposed route or trail should undergo a mandatory environmental review. From recent studies we now know some existing roads, particularly unpaved roads, have significant negative environmental, watershed and wildlife impacts not previously recognized. For example, the watershed reports published by the Minnesota Pollution Control Agency in 2013 and 2018 for the Lake Superior North Watershed identify, for the first time with scientific data, all of the exceptional streams and creeks in the watershed for which protection strategies are indicated. Protection strategies can include not increasing motorized traffic that would increase dust pollution and sediment load.

We also now recognize that wetlands are as critical to the health of a watershed as are lakes, streams and creeks. Therefore, wetland proximity to any route, existing or otherwise, should be carefully reviewed before intentionally increasing traffic that could result in an increase of pollution, fugitive dust and sediment loads to the wetlands.

Habitat fragmentation for wildlife is also a major focus in road ecology today and mitigation

measures can and are being taken on existing roads to address these issues. There are now global conferences and efforts addressing this very issue on existing road infrastructure. After careful review of an existing road with this new information, use of an existing road for a trail to add new motorized traffic may not be environmentally indicated.

Thank you for your consideration and for undertaking public hearings on these proposed amendments. These hearings respect the right of the public to have input on these critically important environmental issues regarding our lands, natural resources and wildlife.

Sincerely,  
Robert Tamanaha

Sent from my iPad

**From:** Peter  
**To:** [Dahl, Erik \(EQB\)](#); [Wilson, Denise \(EQB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Monday, February 04, 2019 1:05:32 PM

---

Peter Hovde  
17300 Horseshoe Ln  
Bagley MN 56621

1) The Environmental Quality Board will automatically amend its environmental review rules **without** public hearings unless they hear from 25 people by 4:30 pm on 02/04/2019.

2) From EQB purpose statement; "Our mission is to enhance Minnesota's environmental quality for current and future generations by leading interagency work to **advance meaningful public engagement** and facilitate informed decision-making on critical environmental issues."

The conflict between EQB purpose statement and its proposed action could not be more complete. That your proposed action cropped up during the first days of the Walz administration touting One Minnesota is a stunning surprise.

Adding St. Cloud to the St. Paul hearing site is another example of metro bias. We in Greater Minnesota are experiencing many of the problems the EQB deal with. Extending the list of sites to Bemidji and Duluth among others would help enable those residents of outstate Minnesota. Your members would also be able to learn crucial detail about these issues threatening our state's natural heritage.

I'm sure your intent is to make your process more efficient. Democracy is messy and inefficient, but stifling people's input into EQB rule-making inherently restricts democracy.

**Please do not change your rules on public input, and expand the number of hearings into Greater Minnesota.** Either that, or change your purpose statement by eliminating "to **advance meaningful public engagement.**"

Sincerely,

Peter Hovde



**From:** Chris Byrd  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Subject:** Mandatory Category Rulemaking: Comment  
**Date:** Wednesday, January 30, 2019 2:02:05 PM  
**Attachments:** [EOB 2018 Rule Change Comments\(1-28-19\)-signed.pdf](#)

---

Attached please find comment letter from the Benton County Public Works/Highway Department.

Thanks,

**Chris Byrd, P.E.**  
*Public Works Director/County Engineer*  
**Benton County**  
[cbyrd@co.benton.mn.us](mailto:cbyrd@co.benton.mn.us)

January 28, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

**Subject:** Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Erik:

The purpose of this letter is to submit both a request for hearing as well as comments regarding proposed amendments to Minnesota Rules governing environmental review placed on a 60-day public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided in 2016 for road authorities and other interested persons to provide input.

- A. Benton County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:
- Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.
- Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.
- B. Benton County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the stated rule revision streamlining goal. The process of assessing the impacts of the proposed EQB rule changes, in fact, lead us to conclude that subpart 27 should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County's Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax

Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

*Benton County is an Equal Opportunity Employer*

Supporting information:

1. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands.” The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.
  - c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
2. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts [4410.0200](#) to [4410.6500](#) is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County’s Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax

Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

3. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):  
 In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [*emphasis added*]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [*emphasis added*].
4. **The proposed revisions to subpart 27 item B would result in new costs** for Benton County as well as other Minnesota cities, counties, and project proponents. The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost Minnesota counties at least an additional \$2,000,000 or more per year** (aggregated statewide) **for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program**. This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. The rule SONAR, which states (pages 66 – 67) that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs

### Public Works/Highway Department

**Chris Byrd, P.E.**  
 Director/County Engineer  
**Mark Loidolt, P.E.**  
 Assistant Engineer  
**Mark Ebnet**  
 Highway Superintendent

7752 Hwy 25 N  
 P.O. Box 247  
 Foley, MN 56329  
 Benton County’s Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
 (320) 968-5333 Fax  
 Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

*Benton County is an Equal Opportunity Employer*

for proposers and responsible governmental units (RGUs). **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** For the reasons described elsewhere in this letter, we believe the proposed rule change will result in no environmental benefit. As such **we expect that a cost-benefit analysis would not support the proposed subpart 27 item B rule changes.**

Per Minn. R. 14.131 the agency must **consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

5. In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project. **The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increased cost that should be included in a cost/benefit assessment.
  
6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: "This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects." Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits.** DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County's Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax

Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400.
8. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site **“USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.”** USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit. The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA).

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County's Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax

Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

*Benton County is an Equal Opportunity Employer*

9. **The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.
10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” The SONAR addresses this requirement on page 69 (included below).
- “It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.”

As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

#### C. Requested Actions

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County's Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax  
  
Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

1. **Benton County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. Benton County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me at the numbers below.

Sincerely,



Chris Byrd, PE  
Director/County Engineer

### Public Works/Highway Department

**Chris Byrd, P.E.**  
Director/County Engineer  
**Mark Loidolt, P.E.**  
Assistant Engineer  
**Mark Ebnet**  
Highway Superintendent

7752 Hwy 25 N  
P.O. Box 247  
Foley, MN 56329  
Benton County's Website:  
[www.co.benton.mn.us](http://www.co.benton.mn.us)

(320) 968-5051 Main  
(320) 968-5333 Fax

Email Address:  
[highway@co.benton.mn.us](mailto:highway@co.benton.mn.us)

*Benton County is an Equal Opportunity Employer*



**From:** Nicolette Slagle  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Request for Public Hearing  
**Date:** Wednesday, January 30, 2019 2:42:29 PM

---

Dear Mr. Dahl,

In regard to the Minnesota Environmental Quality Board's Amended Dual Notice of Intent (attached) to amend administrative rules governing environmental review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 I wish to make the following comments in opposition, make requests for public hearings, request addition of locations for hearings and contest the legality of portions of the rule changes:

Specifically, these early comments are intended to:

Inform the EQB of my intent to make more extensive and substantive comments in opposition to the entirety of proposed amendments at a later date but before the comment deadline on February 4th and;

Provide EQB staff with early notice of my request for formal public hearings on the proposed amendments, and;

Request that more than just the two proposed hearings be scheduled and that these additional hearings be at locations more accessible to citizens in Northern Minnesota. Locations such as Detroit Lakes, Bemidji, Brainerd and/or Duluth should be considered. At least two additional or alternative hearing locations and dates are needed. A St. Cloud hearing location may have been intended to serve citizens in northern Minnesota but that location does not serve that purpose adequately. It is still more than a two hour drive to St. Cloud from my and many other major communities in this part of the state. For efficiency, the St. Cloud location could be entirely replaced by at least two hearing locations further north. This early request for additional or relocation of hearings is made now in order for EQB and ALJ staff to have sufficient time to make the necessary adjustments in hearing schedule and locations before the public comment period expires, and;

Thank you for considering my request and I would appreciate learning of the EQB's decision on my request for additional hearings at more convenient locations as soon as possible. If my request for additional hearings is denied, please include the rationale used to support that decision.

Miigwech!

-----  
Nicolette Slagle

Research Director and Deputy Director  
Honor the Earth  
218.303.9038

*We have this prophecy called the time of "The Seventh Fire," which time we're told that we have a choice between two paths. One path, they say, is well worn, but it's scorched. The other path, they say, is not well worn and it's green. It's our choice upon which path to embark.*

*--Winona LaDuke*

**From:** Gischia, Scott A  
**To:** [Dahl, Erik \(EQB\)](#)  
**Subject:** Comments to EQB Proposed Amendment to Rules Governing Environmental Review  
**Date:** Thursday, January 31, 2019 2:12:27 PM  
**Attachments:** [Jan2019 EQB Rule Change language - comment letter.pdf](#)

---

Dear Mr. Dahl –

Please find enclosed Cleveland Cliffs comments to EQB’s Proposed Amendment to Rules Governing Environmental Review. Thank you for the opportunity to comment and please contact me with any questions.

-Scott Gischia



**Scott A. Gischia, P.E.**  
Director, Environmental Compliance, US Iron Ore Operations  
p 218-226-6076 m 218-830-9493 e [scott.gischia@clevelandcliffs.com](mailto:scott.gischia@clevelandcliffs.com)

**CLEVELAND-CLIFFS INC.**  
10 Outer Drive  
Silver Bay, MN 55614

---

This electronic message and any attachments included with this message are for the exclusive use of the individual or entity to which it is intended to be addressed. This message may contain information that is privileged or confidential and thereby exempt and protected from unauthorized disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, be aware that any disclosure, dissemination, distribution or copying of this communication, or the use of its contents, is not authorized and is strictly prohibited. If you have received this communication and are not the intended recipient, please notify the sender immediately and permanently delete the original message from your e-mail system.

---



CLEVELAND-CLIFFS INC.  
 Cliffs Mining Services Company  
 200 Public Square, Suite 3300, Cleveland, OH 44114  
 P 216.694.5700 clevelandcliffs.com

January 31, 2019

Mr. Erik Cedarleaf Dahl  
 Environmental Quality Board  
 520 Lafayette Road  
 St. Paul, MN 55101

**Re: Comments to EQB Proposed Amendment to Rules Governing Environmental Review**

Dear Mr. Cedarleaf Dahl,

Cleveland Cliffs Inc. (Cliffs) is an iron mining company that owns and operates several iron ore mines in Minnesota.

Cliffs has reviewed the proposed amendments to Minnesota Rules governing environmental review as noticed by the Environmental Quality Board on November 5, 2018. We understand that comments will be received until 4:30 p.m. on February 4, 2019. Cliffs is providing comments specific to proposed changes to Minnesota Rule 4410.4430 Subp. 27(B) which are reprinted below as proposed in the Certified Rule Language posted on the EQB's website.

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area, a delineated  ~~flood plain~~ floodplain, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit shall be ~~is~~ the RGU.

As a significant participant in the State wetland programs, Cliffs is concerned about the potential for inadvertent triggering of additional, burdensome environmental review requirements as a result of the proposed language change. Mining projects are typically measured on the scale of tens to hundreds of acres due to the nature of the progression of mines in the wetlands-rich regions of northern Minnesota where the State's iron ore reserves are located. These projects undergo the rigorous review by the State Wetland Conservation Act program, and where applicable, the overlapping review of the Corps of Engineers as it administers the Federal Clean Water Act 404 program.

While Cliffs agrees that clarifying the terms of the types of wetlands for which acres may trigger environmental review is helpful, it is concerned that diminishing the minimum acreage of these types to only one acre – a value that may represent less than one percent of a typical mining project – presents

undue risk for an undesirable and inadvertent effect of this rule change that can result in a substantial increase in regulatory burden for projects that would not otherwise require review. This appears particularly troublesome when neither floodplains nor shorelands are formally defined by rule here and present the potential for confusion in interpretation.

Mining development works on long timelines and relies on a degree of business certainty of regulatory expectations. The proposed change adds undue risk of triggering an EAW under the proposed Subpart 27(B) language and adding an EAW to projects that currently do not require this level of review. Cliffs' prior experience indicates project timelines should anticipate an additional 12-24 months of time to allow for an EAW process in addition to the already estimated 12-24 months of WCA and 404 program permitting times. Additional time on this scale reduces business certainty of being able to deliver economic projects on time and will drive development dollars out of state. This also places unnecessary demand on the State resources required to conduct these time and cost-intensive review exercises for limited practical benefit.

Cliffs requests that EQB reconcile these risks by modifying its proposed rules by either:

a) Including an exception to this provision for WCA projects where DNR is the LGU (new text proposed in italics); or

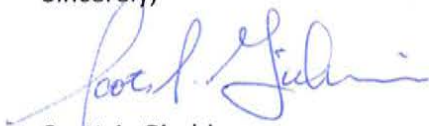
B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit ~~shall be~~ is the RGU. *This provision shall not apply when the DNR is the LGU as described in Minn. Stat. 103G.222, Subd 1(a).*

b) Retaining the 5 acres threshold and clarifying the definitions of shoreland and floodplains (new text proposed in italics and double-strikethrough).

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetland or 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of ~~one~~ five acres or more of wetlands, excluding public waters wetlands, If any part of the wetland is within a shoreland area *as identified in an ordinance by an eligible LGU*, a delineated ~~flood plain~~ floodplain *as identified in an ordinance by an eligible LGU*, a state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters are, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Thank you for the opportunity to provide comments.

Sincerely,



Scott A. Gischia  
Director, Environmental Compliance, US Iron Ore Operations



January 22, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Bloomington is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit shall be is the RGU.

The City of Bloomington strongly opposes this proposed revision. In our City, as was common during the time of development of many other first and second ring suburban cities, natural wetlands were used for stormwater management. As a result these areas require regular maintenance to preserve the flood protection and water quality benefits. The additional requirements of an EAW would unnecessarily add duplication of regulation to perform maintenance required under our MS4 permit. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Government Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process

is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,

A handwritten signature in blue ink that reads "Julie M. Long". The signature is written in a cursive style.

Julie M. Long, PE  
City Engineer  
City of Bloomington



January 22, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Re: **Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Faribault is in favor of reducing regulatory duplication and applauds you in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands,~~ excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government governmental~~ unit shall be is the RGU.

The City of Faribault strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials,



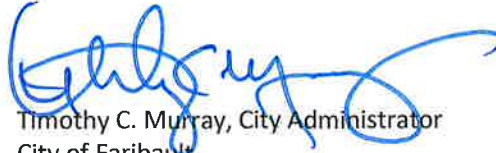
fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Sincerely,



Kevin F. Voracek, Mayor  
City of Faribault



Timothy C. Murray, City Administrator  
City of Faribault

**From:** Carol Andrews  
**To:** [Wilson, Denise \(EOB\)](#); [Dahl, Erik \(EOB\)](#)  
**Cc:** [Jim Foldesj](#)  
**Subject:** Mandatory Category Rulemaking  
**Date:** Tuesday, January 22, 2019 2:58:03 PM  
**Attachments:** [EOB rulemaking St Louis County Comment Letter January 17 2019.pdf](#)

---

This message was sent securely using Zix®

Denise and Erik:

The purpose of this email is to submit comments on proposed revisions to mandatory categories rule revisions. If one of you could confirm you have received this email and that the attached comment letter I would appreciate it.

Thank you.

Carol Andrews, P.E.  
St. Louis County Public Works Environmental Project Manager  
4787 Midway Road  
Duluth, MN 55811  
Office: 218-625-3862  
Cell: 218-390-8981  
[andrewsc@stlouiscountymn.gov](mailto:andrewsc@stlouiscountymn.gov)

This message was secured by [Zix](#)®.



# Saint Louis County

Public Works Department • Richard H. Hansen Transportation & Public Works Complex  
4787 Midway Road, Duluth, MN 55811 • Phone: (218) 625-3830

**James T. Foldesi, P.E.**  
Public Works Director/  
Highway Engineer

January 17, 2019

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd. St. Paul, MN, 55101

Subject: Revisor's ID Number RD-04157 - Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules 4410.4300

Dear Mr. Dahl:

The purpose of this letter is to submit a request for hearing and comments regarding proposed amendments to Minnesota Rules governing environmental review placed on public notice by the Environmental Quality Board (EQB) starting November 13, 2018. I would first like to thank the EQB for your work over the past several years on this regulatory streamlining effort and for the opportunities provided earlier in the process for road authorities and other interested persons to provide input.

- A. St. Louis County **supports** the following proposed rule amendments to the Environmental Assessment Worksheet (EAW) highway category that meet the rule update goal of improving environmental review efficiency:

Minn. R. 4410.0200, subpart 5a: the addition of this definition of Auxiliary Lane supports the changes to the Mandatory EAW highway category in 4410.4300, subpart 22.

Minn. R. 4410.4300, subpart 22, item B: an EAW is required "For construction of additional ~~travel through~~ lanes or passing lane(s) on an existing road for a length of ~~one~~ two or more miles." This is a prudent change from the current rule.

- B. St. Louis County **strongly opposes** the proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers. This proposed revision does not meet the rulemaking process or the stated rule revision streamlining goal. The process of assessing the impacts of the proposed changes, in fact, lead us to conclude that this subpart should either be deleted or significantly scaled back in scope due to its duplication of state and federal laws, rules and permitting programs for work in public waters, wetlands and tributaries.

*"An Equal Opportunity Employer"*

Supporting information regarding the inappropriate change to 4410.4300, subpart 27:

1. **The proposed changes to subpart 27 item B are recent and, as such, have not been afforded adequate time for discussion.** This change was not included in the 2016 draft of potential rule amendments. In fact, our 2016 comment letter praised EQB for not making changes that would increase the number of projects triggering a mandatory EAW, given that effort must be made already to evaluate alternatives and demonstrate compliance with wetland sequencing requirements of state and federal rule (avoid, minimize, mitigate). Our letter stated:

“In addition, SLC PW supports that EQB is not proposing mandatory category changes that would pull significantly more projects into the environmental review process than existing rules. I believe this is justified, given that **our projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. County highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken.**

In particular I was pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27.”

**The proposed changes to subpart 27 item B were not included in the required notifications to the public** and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016. The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B.

2. **The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW:**
  - a. **The types of wetlands included have been expanded** to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to “types 3 through 8 wetlands... excluding public waters wetlands”. The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states “public waters wetlands means all types 3, 4 and 5 wetlands ... that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.” In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands.
  - b. **The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.** Under the existing rule language one acre of impact only becomes the applicable threshold under limited

circumstances. The **existing rule allows a threshold area of impact up to five acres** depending on the size of the entire affected wetland.

- c. Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland. Many of these projects replace road crossings over streams and necessitate at least some impacts within the shoreland zone. The shoreland zone includes the area within 300 feet of a river or stream per Minn. R. 4410.0200 subp. 82 (EQB definitions) which references Minn. R. 6120.2500, subp. 15 (DNR rules).
  - d. **We estimate that the proposed rule change would increase the number of projects that trigger EAW preparation under Supb. 27, item B, from zero to 20 or more projects per year.** In your response to our request for information (Enclosure 1) you stated that one project in the past three years triggered the non-public waters wetland review criteria. By phone you indicated that one project was the “Wayzata Lake Effect” project. Review of related web sites show this is a complex project that involves creating shoreline marshes, other work along the shoreline, fishing pier construction, buildings, a boardwalk, a major street redesign, impacts to the lake volume, and beach enhancement. Based on our review of the associated project EAW it appears that this project triggered EAW Category 27 item A, not only item B. The number of local road projects exceeding one acre of permanent wetland impacts that qualify for the local road wetland replacement program the past two years has averaged 20 projects per year (Tim Smith, MN Board of Water and Soil Resources, personal communication 11/30/18 with C. Andrews, St. Louis County). This is just one subset of projects.
3. **Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota’s environmental review rules and may detract from their effectiveness for other projects.** In our experience **the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives.** If over applied, however, the environmental review process can become more of a paperwork exercise than a useful planning process.

Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that “a first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.” The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of

alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

Part 4410.1000, subp. 1 “Purpose of EAW” states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding **none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.**

4. **The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking** described in the associated Statement of Need and Reasonableness (SONAR). The proposed changes to subpart 27 are the antithesis of streamlining. The SONAR states the following (page 9):

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances [emphasis added]. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013. Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection [emphasis added].

5. **The proposed revisions to subpart 27 item B would result in new costs for St. Louis County as well as other Minnesota cities, counties, and project proponents that have not been considered as required under Minn. R. 14.131** . The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would **cost** Minnesota counties at least an additional \$2,000,000 or more per year (aggregated statewide) for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program (Enclosure 2). This estimate is very conservative because it does not include non-road projects or other highway department projects such as construction of sidewalks or new maintenance facilities that do not qualify for the Local Road Wetland Replacement Program. In addition the

2018 SONAR states on pages 66 – 67 that Part 4410.4300 subpart 27 may increase costs for project proposers that trigger this mandatory threshold and may increase the number of required EAWs along with associated costs for proposers and RGUs. **These economic and other associated impacts have not been adequately quantified by EQB and reviewed via a cost-benefit analysis.** As explained in this letter we believe **the proposed rule change will result in no environmental benefit.** As such **we expect that a cost-benefit analysis would not support the proposed changes.**

**Per Minn. R. 14.131 the agency must consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.** The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe that a **consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice.**

In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction costs due to inflation** that should be factored into the MMB assessment. Costs associated with delaying a typical \$800,000 bridge replacement project for one year are estimated to be \$25,000 to \$40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project.

**The time required to complete the EAW process may also increase for all projects conducting environmental review** under EQB rules unless RGUs increase staffing levels. The need for additional RGU staff time is another increase in the rule implementation cost that should be included in a cost/benefit assessment.

6. **Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because it **duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. The 1982 EQB rule SONAR for this subpart and item states: “This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.” Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineers (USACE) permits.** DNR review of a permit application to authorize work in public waters

includes determining whether projects that entail work in a FEMA mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and MPCA 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property.

7. **EQB has not adequately established the reasonableness of the mandatory EAW wetland category.** The 1982 rule SONAR states (page 154) “This category is reasonable because environmental impacts from these activities frequently are not addressed by the applicable regulatory mechanisms. The DNR does not have permit authority over these resources and local ordinances typically do not address the total resource impact potential.” As acknowledged in the 2018 SONAR, the WCA was enacted in 1991 to regulate those wetlands other than DNR public water wetlands after the establishment of mandatory requirements for wetland under EQB rules. **EQB should have reconsidered the need for the mandatory EAW category in light of the enactment of the WCA.**

The 2018 SONAR states (page 30) “The proposed change to one acre reflects the lowest possible size threshold established by the current rule. All of these changes are needed to better reflect the changes that have occurred to wetland programs in the state since the original 1982 EAW category was written.” We disagree with EQB’s assertion that the changes are the appropriate way to update the rules to reflect the process of wetland impact avoidance, minimization and mitigation established by the WCA.

8. **Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects involving existing roads that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400 (related SONAR provided in Enclosure 3).
9. **Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.** Projects that will result in impacts to wetlands or other waters of the



Erik Cedarleaf Dahl, Environmental Quality Board  
 Attn: Mandatory Category Rulemaking  
 Page 7

US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis." USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with NEPA.

10. Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR "an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference." The SONAR addresses this requirement on page 69:

It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.

**As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland**

**permitting that includes environmental review under NEPA. Thus the SONAR statement that there are “few cases where dual review is needed” is incorrect.** Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property.

11. Most of the mandatory EAW categories list intentional activities such as expanding an airport, building a new subdivision etc. **There are five EAW categories that set thresholds based on the consequences of activities** that provide a system to capture unlisted activities with the potential to have significant environmental impacts. Comparing the “consequence-based” categories to see if they have parity in the size or likely complexity of project that they capture and types of exemptions allowed, we conclude that **4410.4300 subp. 27 as revised casts a much wider net than the others, i.e., it would capture smaller, less complex projects.** Review of the 1982 SONAR for the wetland category indicates EQB did not intend for this category to capture a large number of projects. Page 154 of the **1982 SONAR projects two EAWs/year.**
  - The air pollution category (4410.4300 subp. 15) covers construction or modification of a stationary source that generates 250 tons or more per year of a single air pollutant after installation of air pollution control equipment. This is a very large source compared to most facilities that must obtain an air pollution permit. Our understanding is that this likely applies to zero to five facilities per year. Note that this category looks at environmental impacts of projects **after treatment** but the wetland category does not allow a project proposer to take into account wetland impact mitigation.
  - **The stream diversion category** (subp. 26) covers diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles. **This category includes an exemption for work in the right-of-way of an existing public roadway associated with bridge or culvert replacement (4410.4600, subp. 14) and for routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair (4410.4600, subp. 17).** These exemptions seem equally applicable to 4410.4300, subp. 27.
  - **The historic property category allows exemption for projects reviewed under Section 106 or a list of other types of review. This supports the conclusion that subp. 27 is not necessary because public water and wetland impacts that exceed one acre of impact go through detailed state and/or federal review.**
  - Subp. 30 regarding natural areas also applies to a relatively narrow realm of projects with impacts to BWCA, state trails, state parks etc.

C. Requested Actions

1. **St. Louis County Public Works requests a public hearing** for the proposed amendments to Minn. R. 4410.4300 as called for in the November 13, 2018 public notice. At a hearing we would address the mandatory EAW requirements for public waters, public water wetlands, and wetlands as set out in 4410.4300 subpart 27. During the hearing we can provide more detailed evidence of the negative impacts, including costs, associated with the recently proposed change to this mandatory EAW category.
2. St. Louis County Public Works recommends that EQB **delete 4410.4300 subpart 27 from the rules in its entirety to eliminate duplication** with existing regulatory programs that provide environmental review for impacts to wetlands, public waters and public water wetlands for the reasons laid out in Part B of this letter.
3. If the above request to delete subpart 27 is denied, revise 4410.4300 subpart 27 as follows:

**Subp. 27. Wetlands and public waters.**

Items A and B designate the RGU for the type of project listed. Maintenance of existing drainage systems, public road maintenance and other drain or fill activities exempted under Minnesota Statutes, chapter 103G are exempt from this part.

*Reasoning: The Wetland Conservation Act (WCA) at Minn. Stat. 103G specifies categories of exempt drain and fill activities that may be conducted without prior approval, allowing certain wetland activities with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation. Requiring preparation of an EAW for wetland impacts associated with activities that are otherwise exempt under the WCA defeats the intent of establishing the WCA exemptions. It would be helpful to road authorities and others to make clear that these common activities are not subject to this subpart.*

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

*Reasoning: The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category.*

- B. For projects that will ~~change or diminish the course, current or cross section of 40 percent or more of five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause impact, as defined in part 8420.0111, to a total of one five or more acres for public road projects or three or more acres for other projects of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, the local governmental unit is the RGU.

*Reasoning: this matches the draft revised rules published November 13, 2018 with the exception of the area of impact. The proposed language reflects the threshold for a project to be eligible for coverage under USACE letter of permission LOP-05-MN. Also, five acres is the higher end of the varying triggers established in the current rule. As explained previously in this letter, preparing EAWs for projects that trigger only the wetland mandatory EAW category is unlikely to result in reduced environmental impacts, especially for public road projects. As such it is reasonable to simplify the rule language by selecting the higher end of the existing threshold.*

Item B wording option 2 - Another option, which we find less preferable to that proposed above, is to retain all existing rule language thresholds and improve the clarity by listing the criteria, for example:

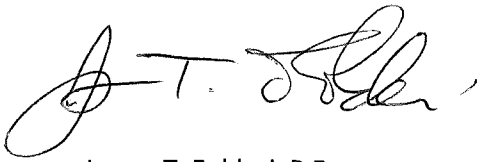
“For projects that will cause an impact, as defined in part 8420.0111, to a wetland if the criteria in subitems a through d are met; the local governmental unit shall be the RGU.

- i. Impacted wetlands are types 6, 7 or 8; and
- ii. The total area of any individual impacted wetland, including areas impacted by the project and areas not impacted by the project, is 2.5 acres or more; and
- iii. The area of wetland impact exceeds 5 acres or, if the total wetland size falls between 2.5 and 5.0 acres, the area of impact exceeds 40% of the total wetland; and
- iv. Any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.”

Erik Cedarleaf Dahl, Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
Page 11

Thank you for your consideration of our concerns and recommendations. If you have any questions, please do not hesitate to contact me or Carol Andrews of my staff at (218)625-3862.

Sincerely,

A handwritten signature in black ink, appearing to read "J.T. Foldesi". The signature is fluid and cursive, with the first name "J.T." and the last name "Foldesi" clearly distinguishable.

James T. Foldesi, P.E.

Public Works Director/Highway Engineer

Cc: Carol Andrews, P.E., Environmental Project Manager, SLC PW



January 18, 2019

Mr. Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Proposed Amendment to Rules Governing Environmental Review,  
Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200,  
4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Eagan is in favor of reducing regulatory duplication and commends the EQB in this effort. Based on the review of the proposed amendments, we request a public hearing regarding the proposed changes to **Part 4410.4300, subpart 27. Wetlands and public waters, Part B.**

For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit is the RGU.

The City of Eagan strongly opposes this proposed revision. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impacts, with no tangible benefit to the environment. This proposed revision does not meet the Environmental Quality Boards' (EQB) stated goal of streamlining. A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands.

Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits.

There are many projects in which EAW's are a necessary and useful tool, a simple project with only wetland impacts is not one of those cases.

Thank you for consideration of this letter.

Sincerely,



John Gorder, P.E.

City Engineer

Eagan, MN



**Public Works Department**  
 635 2<sup>nd</sup> Street SE  
 Milaca, MN 56353  
 (320) 983-8201

**Bruce D. Cochran, PE**  
 County Engineer

**Reed Pederson**  
 Construction Services Manager

**Kevin Schultz**  
 Maintenance Superintendent

**LETTER OF TRANSMITTAL**

**To:** Erik Cedarleaf Dahl  
 Planning Director-Rulemaking  
 Environmental Quality Board  
 520 Lafayette Rd  
 St. Paul, MN 55101

**Date:** January 18, 2019

**Re:** Mille Lacs County Resolution No. 2019-1-15-19-01  
 Request to the Environmental Quality Board to Hold a Public Hearing

**WE ARE SENDING YOU:**

Copies	Description
1	Mille Lacs County Resolution No. 2019-1-15-19-01

**THESE ARE TRANSMITTED as checked below:**

- For Your Information
- As Requested**
- Please Sign and Return
- For Approval
- For Review and Comment

**REMARKS:**

Signed:

Name:  
 Title:

Bruce D. Cochran, PE  
 Mille Lacs County Engineer



**Board of Commissioners  
Mille Lacs County, Minnesota**

**REQUEST OF THE ENVIRONMENTAL QUALITY BOARD  
TO HOLD A PUBLIC HEARING**

**PWD Resolution No. 2019-1-15-19-01**

WHEREAS, Mille Lacs County has a land area of approximately 436,500 acres and approximately 171,900 acres or 39% are wetlands.

WHEREAS, Mille Lacs County is the Local Governing Unit for the Wetland Conservation Act (WCA).

WHEREAS, on November 13, 2018, the Minnesota Environmental Quality Board published Notice of Intent to adopt proposed amendments to the Rules Governing Environmental Review.

WHEREAS, MN Rules 4410.4300, Subp 27, Wetland and Public Waters are being proposed to be amended.

WHEREAS, the proposed amendments to MN Rules 4410.4300, Subp 27, will reduce the allowed wetland impact amount from 5 acres to 1 acre, and the types of wetland are now increased from type 3 through 8 to type 1 through 8.

WHEREAS, the proposed amendments to MN Rules 4410.4300, Subp 27, will have a significant impact on the time and cost in our road projects and other large scale projects.

WHEREAS, the proposed amendments to MN Rules 4410.4300, Subp 27, will require an EAW for accessing suitable building sites for some residential properties.

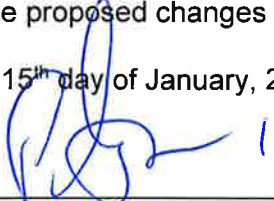
WHEREAS, through the WCA, all of these wetland activities are reviewed and must follow an approved process. We believe that the proposed language, with added and duplicative wetland scrutiny, is unnecessary.

WHEREAS, reducing the threshold from 5 acres of impact to 1 acre, and expanding the types of wetland to include types 1 and 2 is not practical for Mille Lacs County, or many other counties with a large portion of their land area still remaining in wetlands.

NOW THEREFORE, BE IT RESOLVED, that the Mille Lacs County Board of Commissioners opposes any amendment to MN Rules 4410.4300, Subp 27.

BE IT FURTHER RESOLVED, that the Mille Lacs County Board of Commissioners requests a hearing on the proposed changes to MN Rule 4410.4300, Subp 27.

Adopted this 15<sup>th</sup> day of January, 2019.

  
\_\_\_\_\_  
Pat Oman  
Mille Lacs County Administrator

  
\_\_\_\_\_  
Roger Tellinghuisen  
Mille Lacs County Board Chair



December 27, 2018

Will Seuffert  
Executive Director  
Environmental Quality Board  
444 Lafayette Road  
St. Paul, MN

RE: Proposed Revisions to MN Rules on Mandatory Categories - Chapter 4410

Dear Executive Director Seuffert:

The Red River Watershed Management Board (RRWMB) appreciates the opportunity to comment on the proposed revisions to Minnesota Rules Chapters 4410 pertaining to the Environmental Quality Board's (EQB) Mandatory Category rulemaking. Attached you will find a letter addressed by Ron Harnack from July 16, 2017 on the initial comments sent to the EQB on Mandatory Category rulemaking by the RRWMB. The RRWMB continues to stand by these comments and contends that the RRWMB be exempted from mandatory category rules.

This initial letter outlines a brief history of the RRWMB allowing for flood damage controls as well as improving habitat and water quality. We continue to believe that through the 1998 Mediation Agreement (MA), that thresholds for EAW and EIS categories can justifiably be significantly raised or eliminated or as an alternative added to the "EXEMPTIONS" of the rule. If you recall, the MA is a framework to reduce flood damages and improve natural resources in the Minnesota portion of the Red River Basin,

The RRWMB appreciates clarification in further defining Local Government Unit to be the Responsible Government Unit (RGU) to prepare and approve environmental review documents like EAW's and EIS's. The 1998 MA, the Flood Damage Reduction Work Group (FDRWG), and the Technical and Scientific Advisory Committee (TSAC) are important to the environmental review process as are individual watershed districts.

Throughout the document, it is noted that the DNR may possibly be the RGU if it is believed the DNR has similar or greater expertise. The RRWMB is concerned with the lack of clarity on how the EQB will designate who is the RGU if there is similar or greater expertise in analyzing the potential impacts on flood damage reduction projects by watershed districts within the RRWMB.

The RRWMB maintains that it has created the proper technical expertise through the MA, FDRWG, TSAC, and Local Project Teams as called for in the MA. The RRWMB and its individual watershed districts already work closely with the DNR, BWSR and other LGU's to ensure there is a high level of expertise in analyzing potential impacts. We believe this is another encroachment by agencies to regulate environmentally beneficial projects where there is already substantial expertise.

Regarding Wetlands and Public Waters (Part 4410.4300, subpart 27), the RRWMB has concerns about lowering the standard for wetlands from 2.5 acres to 1 acre. First, this is inconsistent with the EQB's draft mandatory categories changes. The EQB has stated throughout the document that the rule changes would be consistent with the Minnesota Wetland Conservation Act (WCA). This change takes the draft rules out of line with the WCA. Minnesota Rules Chapter 8420.0100 already achieves the intended purpose of minimizing impacts to wetlands. Second, flood damage reduction projects in the Red River Basin have demonstrated that more wetlands can be created than are impacted.

The decision to change the wetland threshold by the agencies without reaching out to users on how this impact would impact funding of projects negates any expertise the individual watershed district have. The RRWMB opposes this change and respectfully requests that the agencies reach out to local units of government and various associations on how this will impact funding of projects.

Again, we appreciate being able to comment on the proposed revisions to MN Rules Chapter 4410 regarding how it will affect projects within the Red River Basin of Minnesota. We still maintain that the RRWMB could be exempt from many of the categories as outlined by Ron Harnack's letter on July 16, 2017 and we would appreciate further consideration of this previous letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Sip", written over a horizontal line.

Robert L. Sip  
Executive Director  
Red River Watershed Management Board

**CC:** RRWMB Managers  
Lisa Frenette, Legislative Liaison